HOUSE OF COMMONS

First Session—Twenty-second Parliament

1953-1954

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman—H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

Bill No. 421 (Letter I-13 of the Senate),

An Act to amend the National Harbours Board Act.

WEDNESDAY, MAY 26, 1954

MONDAY, MAY 31, 1954

WITNESSES:

Mr. John F. Finlay, Legal Adviser, National Harbours Board; Mr. Jean Brisset, Q.C., of Montreal, representing the Shipping Federation of Canada and the Vancouver Chamber of Shipping.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

ORDERS OF REFERENCE

MONDAY, May 24, 1954.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 421 (Letter I-13 of the Senate), intituled: "An Act to amend the National Harbours Board Act".

TUESDAY, May 25, 1954.

Ordered,—That the name of Mr. Winch be substituted for that of Mr. Ellis on the said Committee.

WEDNESDAY, May 26, 1954.

Ordered,—That the name of Mr. Cardin be substituted for that of Mr. Dupuis; and

That the name of Mr. Breton be substituted for that of Mr. Richard (*Saint-Maurice-Lafleche*) on the said Committee.

Attest.

LEON J. RAYMOND
Clerk of the House

REPORT TO THE HOUSE

TUESDAY, June 1, 1954.

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

EIGHTH REPORT

Your Committee has considered Bill No. 421 (Letter I-13 of the Senate), intituled: "An Act to amend the National Harbours Board Act", and has agreed to report the said bill with the following amendments:

1. Page 1, Clause 1, line 9: after the word "charterer" insert the words *by demise;*

2. Page 2, Clause 3, line 11: delete the word "fifty" and substitute therefor the words *twenty-five;*

3. Page 2, Clause 3, line 26: delete the word "fifty" and substitute therefor the words *twenty-five;*

4. Page 4, Clause 8, delete lines 29 to 41 inclusive and substitute therefor the following:

(*b*) *property under the administration of the Board has been damaged by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of his superior officers;*

(*c*) *obstruction to the performance of any duty or function of the Board or its officers or employees has been made or offered by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been substained by the Board;*

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5. Page 4, Clause 8, line 42: after the word "has" insert the following words:

in respect of the vessel;

6. Page 6, Clause 9, lines 31 and 32: delete the words "by the owner of the goods" and substitute therefor the following:

by the person in whom title to such goods is vested.

A copy of the evidence adduced in appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 26, 1954.

The Standing Committee on Railways, Canals and Telegraph Lines met at 3.30 o'clock p.m. this day.

Members present: Messrs. Bell, Bonnier, Boucher (*Restigouche-Madawaska*), Breton, Byrne, Campbell, Cardin, Carter, Conacher, Deschatelets, Dumas, Gagnon, Garland, Gauthier (*Lac St. Jean*), Gourd (*Chapleau*), Green, Habel, Harrison, Healy, Hodgson, Holowach, Hosking, James, Lafontaine, Langlois (*Gaspé*), McIvor, Montgomery, Murphy (*Westmorland*), Murphy (*Lambton West*), Nicholson, Stanton, Villeneuve and Winch.

In attendance: Mr. R. K. Smith, Q.C., Chairman, Mr. M. A. Archer, Vice-Chairman, Mr. John F. Finlay, Legal Adviser, all of National Harbours Board, and Mr. Jean Brisset, Q.C., representing the Shipping Federation of Canada and the Vancouver Chamber of Shipping.

The Clerk informed the Committee that the Chairman, Mr. Henry B. McCulloch, and the Vice-Chairman, Mr. H. P. Cavers, were unavoidably absent, and attended to the election of a Chairman *pro tem.*

On motion of Mr. Langlois (*Gaspé*).

Resolved,—That Mr. Byrne be Chairman *pro tem.*

Mr. Byrne assumed the Chair.

The Committee proceeded with the consideration of Bill No. 421 (Letter I-13 of the Senate), intituled: "An Act to amend the National Harbours Board Act".

Mr. Langlois made a statement in explanation of the changes contemplated in the existing Act as set out in the Bill under consideration.

Mr. Brisset was heard in opposition to certain clauses of the said Bill.

Mr. Finlay was also called and made a statement on the proposed amendments to the existing Act as set out in the Bill under consideration and was examined thereon.

At 4.25 o'clock p.m., the division bells having rung, the Committee proceeded to the House.

At 5.50 o'clock p.m., a quorum having again assembled, the Committee continued with the examination of Mr. Finlay.

Members present: Messrs. Bell, Bonnier, Boucher (*Restigouche-Madawaska*), Breton, Byrne, Campbell, Cardin, Carter, Conacher, Gagnon, Gauthier (*Lac St. Jean*), Gourd (*Chapleau*), Green Habel, Healy, Hodgson, James, Lafontaine, Langlois (*Gaspé*), Montgomery, Murphy (*Westmorland*), Murphy (*Lambton West*), Nicholson, Small, Stanton, Villeneuve and Winch.

Mr. Brisset was further examined.

At 6.10 o'clock p.m., the examination of the witnesses still continuing, the Committee adjourned to the call of the Chair.

R. J. GRATRIX,
Clerk of the Committee.

MONDAY, May 31, 1954.

The Standing Committee on Railways, Canals and Telegraph Lines met at 2.30 o'clock p.m. this day. Mr. H. B. McCulloch, Chairman, presided.

Members present: Messrs, Bell, Carter, Cavers, Deschatelets, Dumas, Gagnon, Gourd (*Chapleau*), Green, Habel, Hodgson, Hosking, Lafontaine, Langlois, (*Gaspé*), McIvor, Nicholson, Purdy, Viau, Winch and Wood.

In attendance: Mr. R. K. Smith, Q.C., Chairman, Mr. M. A. Archer, Vice-Chairman, Mr. John F. Finlay, Legal Adviser, all of National Harbours Board, and Mr. Jean Brisset, Q.C., representing the Shipping Federation of Canada and the Vancouver Chamber of Shipping.

The Committee resumed consideration of Bill No. 421 (Letter I-13 of the Senate), intituled: "An Act to amend the National Harbours Board Act".

On motion of Mr. Langlois (*Gaspé*).

Ordered,—That the Committee print 500 copies in English and 200 copies in French of the minutes of proceedings and evidence adduced in respect of Bill No. 421.

Clause 1 was called and after discussion Mr. Winch moved,

That Clause 1, subclause 1 where it relates to the proposed new paragraph (*ea*) to Section 2 of the existing Act, be amended by adding after the word "charterer" in the second line thereof the words *by demise.*

At 3.05 o'clock p.m., the division bells having rung, the Committee proceeded to the House.

At 3.20 o'clock p.m., a quorum having again assembled, the Committee resumed consideration of Clause 1 and the amendment thereto by Mr. Winch.

Members present: Messrs. Bell, Campbell, Carter, Cavers, Deschatelets, Decore, Dumas, Gauthier (*Lac St. Jean*), Gourd (*Chapleau*), Green, Habel, Harrison, Hodgson, Hosking, Lafontaine, Langlois (*Gaspe*), McIvor, Nicholson, Purdy, Winch and Wood.

Messrs. Brisset and Finlay were recalled and further examined on the proposed amendment to Clause 1.

At 4.20 c'clock p.m., the division bells having rung, the Committee proceeded to the House.

At 4.40 o'clock p.m., a quorum having again assembled, the Committee continued with the consideration of Clause 1 and the amendment thereto by Mr. Winch.

Members present: Messrs. Bell, Campbell, Carter, Cavers, Deschatelets, Dumas, Gauthier (*Lac St. Jean*), Gourd (*Chapleau*), Green, Habel, Hodgson, Hosking, Howe (*Wellington-Huron*), Lafontaine, Langlois (*Gaspe*), McIvor, Nicholson, Purdy and Winch.

The question on Mr. Winch's amendment, having been proposed, was agreed to.

Thereupon Mr. Green moved,

That Clause 1, subclause 1, where it relates to the proposed new paragraph (*ea*) to Section 2 of the existing Act be amended by deleting the word "agent" in the first line thereof.

After discussion, and the question having been put, the said amendment was resolved in the negative.

Clause 1, as amended, was considered and adopted.

Clause 2 was considered and adopted.

On Clause 3 Mr. Winch moved,

That Clause 3, relating to the proposed new Section 4 A, Subsection (1) of the existing Act, be amended by deleting the word "fifty" where it appears in line eleven on page 2 of the bill and substituting therefor the word *five.*

Thereupon Mr. Cavers moved,

That the said amendment be amended by deleting the word "five" therein and substituting therefor the words *twenty-five.*

After discussion, and the question having been put, the said amendment to the amendment was resolved in the affirmative.

Thereupon Mr. Green moved,

That the amendment be further amended by deleting words "twenty-five" and substituting therefor the words *one quarter of a mile.*

After discussion, and the question having been put, the said amendment to the amendment was resolved in the negative.

Mr. Cavers then moved,

That Clause 3, page 2, relating to the proposed new Section 4A, subsection (2) of the existing Act, be amended by deleting the word "fifty" where it appears in line 26, and substituting therefor the words *twenty-five.*

After discussion, and the question having been put, the said amendment was resolved in the affirmative.

Clause 3, as amended, was considered and adopted.

Clauses 4 and 5 were considered and adopted.

At 6.05 o'clock p.m., a discussion arising on Clause 6, the Committee adjourned to meet again at 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m. Mr. H. B. McCulloch, Chairman, presided.

Members present: Messrs. Bell, Campbell, Carter, Cavers, Deschatelets, Dumas, Gauthier (*Lac St. Jean*), Gourd (*Chapleau*), Green, Habel, Hahn, Harrison, Hodgson, Hosking, Howe (*Wellington-Huron*), James, Lafontaine, Langlois (*Gaspe*), McIvor, Nicholson, Purdy, Viau, Villeneuve, Winch and Wood.

In attendance: Same as at morning sitting.

Clause 6 was further considered and adopted.

Clause 7 was considered and adopted.

On Clause 8 Mr. Winch moved,

That paragraphs (*b*) and (*c*) of the proposed new Section 16 subsection (1) to the existing Act be deleted and the following substituted therefor:

(*b*) *property under the administration of the Board has been damaged by the vessel or through the fault of negligence of a member of the crew thereof acting in the course of his employment or under the orders of his superior officers;*

(*c*) *obstruction to the performance of any duty or function of the Board or its officers or employees has been made or offered by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been sustained by the Board;*

After discussion, and the question having been put, the said amendment was resolved in the affirmative.

Thereupon Mr. Dumas moved,

That paragraph (*d*) of the proposed new Section 16, subsection (1) to the existing Act, be amended by inserting after the word "has" in the first line of the said paragraph the following words:
in respect of the vessel.

After discussion, and the question having been put, the said amendment was resolved in the affirmative.

Thereupon Mr. Green moved,

That the proposed new Section 16, subsection (1) of the existing Act be amended by deleting the words "in the opinion of the Board" where they appear in the third line thereof.

After discussion, and the question having been put, the said amendment was resolved in the negative.

Clause 8, as amended, was considered and adopted.

On Clause 9 Mr. Green moved,

That the proposed new Section 17, subsection (2) of the existing Act be amended by deleting the words "in the opnion of the Board" where they appear in the second and third lines thereof.

After discussion, and the question having been put, the said amendment was resolved in the negative.

Thereupon Mr. Lafontaine moved,

That paragraph (*c*) of subsection (2) of the proposed new Section 17 to the existing Act be amended by deleting the words "by the owner of the goods" where they appear in the second and third lines of the said paragraph and substituting therefor
by the person in whom title to such goods is vested.

After discussion, and the question having been put, the said amendment was resolved in the affirmative.

Clauses 10 to 14 inclusive and the Title were severally considered and adopted.

The Bill, as amended, was adopted and the Chairman ordered to report it to the House forthwith.

During the course of the proceedings, Messrs. Brisset and Finlay were further examined.

At 10.05 o'clock p.m., the Committee adjourned to meet again at the call of the Chair.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

MAY 26, 1954.
3.30 p.m.

The CLERK: Gentlemen, there is a quorum, Mr. McCulloch, and the vice-chairman, Mr. Cavers, are unavoidably absent today, and I would ask you to elect a chairman pro tem.

Mr. LANGLOIS (*Gaspé*): May I move, seconded by Mr. Gourd (*Chapleau*), that Mr. Byrne be appointed chairman pro tem?

The CLERK: Are there any other nominations? It has been moved and seconded that Mr. Byrne be acting chairman. Those in favour? Opposed, if any?

The motion is carried unanimously.

The ACTING CHAIRMAN: Thank you, gentlemen, for honouring me on this occasion. I am certainly humbled in attempting to replace the venerable member for Pictou and I ask your indulgence on this my first attempt to act as chairman.

We have a quorum, and I will now declare the meeting of this committee on Railways, Canals and Telegraph Lines open, and we will consider Bill 421, an Act to amend the National Harbours Board Act. We should have a general discussion and I would like to ask the parliamentary assistant to the Minister of Transport for a short statement.

Mr. LANGLOIS (Gaspé): Mr. Chairman and gentlemen, may I be first permitted to introduce to you the representatives of the National Harbours Board who are in attendance here this afternoon. On my right we have the chairman, Mr. R. K. Smith, the vice-chairman Brigadier Maurice Archer and Mr. J. F. Finlay, counsel for the board. These gentlemen are here at your disposal to supply any information or explanations that you may wish to have in connection with the proposed bill which is presently before you for study. I do not wish to delay the proceedings of the committee by making a lengthy statement, considering the fact that I have already made a series of comprehensive remarks in the House when the bill came up for second reading the other day. I wish, however, to repeat that a good many of the proposed amendments are put forward as a result of the experience acquired through some 18 years of operation of the National Harbours Board; that is, since its inception in 1936. I must also remind you, gentlemen, that the National Harbours Board Act has never been amended since 1936 with the exception of one slight amendment in 1938 which merely granted the board the power to sue and be sued in its own name in tort. Many of the proposed amendments are what we might call routine amendments. These are amendments for the purpose of clarification or placing in a more logical place within the Act some of the existing sections of the Act.

A few days ago representations were received from the Shipping Federation of Canada regarding the proposed legislation and I am informed that a request has been made to the secretary of this committee for the Shipping Federation of Canada to appear before you, gentlemen, and express their views on certain features of the proposed bill. We have here today counsel for the Shipping Federation of Canada, Mr. Brisset of the firm of Beauregard, Brisset and Reycroft. This gentleman is here, but he can be heard only if the committee so wishes. If I may make a suggestion in this respect, leaving

the final decision in the hands of the committee, may I suggest that we first hear the representations that Mr. Brisset wishes to make on behalf of the Shipping Federation of Canada and after he has done so, if the committee so wishes, we might perhaps hear counsel for the board who might give some information to the committee regarding the position of the board in relation to the representations to be made by Mr. Brisset. This is, of course, only a suggestion, and the decision rests with the committee.

Mr. GREEN: Has the chairman of the board any submission to make himself?

Mr. LANGLOIS: The echairman of the board may speak if the committee wishes him to do so, but I think Mr. Smith is quite of the opinion that the statement I made in the House is a very comprehensive one and there is very little he could add to it in a general way about the legislation which is proposed, but this does not prevent any member of the committee who has questions to ask from questioning Mr. Smith or any other representatives of the board who are in attendance.

The ACTING CHAIRMAN: Does this suggested procedure meet with the wishes of the committee?

Agreed.

The ACTING CHAIRMAN: Mr. Brisset?

Mr. BRISSET: Mr. Chairman and gentlemen, as Mr. Langlois has just said I am instructed to appear before you on behalf of the Shipping Federation of Canada and also on behalf of the Vancouver Chamber of Shipping. As you may know, the two associations represent the majority of ship owners and ship operators both on the east and the west coasts.

Mr. NICHOLSON: How about the north—Churchill? Have you any instructions?

Mr. BRISSET: I have no instructions from Churchill but I am quite sure whatever remarks I might make with respect to operations on the east or west coast will equally apply to Churchill. Both associations feel very strongly that certain of the amendments that are now before the House and the committee will have very serious consequences in that they enlarge the liabilities of ship owners and operators and all those who make use of the facilities of the national harbours of Canada. Our criticism is directed mostly against two sections of the Act. These two sections are sections 2e (ea).

Mr. NICHOLSON: Repeat that again please?

Mr. LANGLOIS (*Gaspé*): You mean clauses of the bill and not sections of the Act?

Mr. BRISSET: Of the bill before the House. That is the section which defines the word "owner". The other section is the one that purports to amend section 16 of the present Act and which is clause 8 of bill 113.

Mr. NICHOLSON: Would you mind giving the page and the line?

Mr. BRISSET: The first one is on page one of the old bill. It is section 1 where it is said: "Section 2 of the National Harbours Board Act, chapter 187 of the Revised Statutes of Canada, 1952, is amended by adding thereto, immediately after paragraph (e) thereof, the following paragraph:

> (ea) "owner" includes, in the case of a vessel, the agent, charterer or master of the vessel, and, in the case of goods, the agent, sender, consignee or bailee of the goods, as well as the carrier of such goods to, upon, over or from any property under the administration or jurisdiction of the Board.

I am only here to represent vessel owners, operators, agents and so forth, and, therefore, my criticism is directed against the first part of the definition wherein it is purported to define the owner of a vessel as including the agent, charterer or master of the vessel.

The other is to be found on page 4 of the bill, section B wherein it is provided that section 16 is repealed and the following substituted therefor, (16) (1) and so forth. I do not propose to read at this time the whole of the section. I have prepared for easy reference a comparison rather in brief form, a comparison between the former section of the Act, article 16, and the new sections which include 2e (ea) and section 16, and if the committee so wish I could distribute those.

The ACTING CHAIRMAN: If you have sufficient copies.

Mr. BRISSET: I think I have sufficient copies.

The ACTING CHAIRMAN: Is that agreeable?

Agreed.

Mr. BRISSET: I might explain that this brief has already been submitted to the National Harbours Board at their request after representations were made to them verbally.

Mr. BELL: Was this before or after this bill? I presume you made your brief after you learned what is in the bill?

Mr. BRISSET: Yes, after we learned of the amendments that were sought to be presented to the House.

Mr. LANGLOIS: After the bill was passed by the Senate.

First of all, I want to draw the attention of the committee to the fact that in the present Act there was no section corresponding to 2 (*e*) (*ea*): the definition of the word "owner". And secondly, in order to shorten the procedure, I would like to refer the committee to subsection (*b*) of the new section 16 (1). 16 (1) starts as the old section did, that the Board could seize any vessel within the territorial waters of Canada in any case where—and so forth. In the section there has been added the words "in the opinion of the board". I will not comment on this for the time being.

I will refer the committee right away to section (*b*) to which section (*c*) of the present Act corresponds. A new section (*b*) reads as follows: "Property under the administration of the board has been damaged through the fault or negligence of the owner of the vessel or a member of the crew thereof acting in the course of his employment or under the orders of a superior officer." What is to be noted first is the word "owner" that we find in that subsection (*b*) and the word "owner" is defined now in section 2*e* (*ea*) as the agents—not only the owner—but the agent, the charterer and master of the vessel. It is that definition which we think—or respectfully submit—greatly enlarges the liabilities of ship operators and ship owners and we will say to such an extent that it can have very serious consequences and create great injustice. Under the present Act the board was given the procedural right to seize a vessel in two circumstances: the first, if injury was done by the vessel to board property; and secondly, if injury was done by default or neglect of the crew while acting as the crew. It is a well known principle of maritime law that the right to seize a vessel is only given—and I refer to the Admiralty Act in this respect—is only given when damage is done to property by the vessel as the noxious instrument of the damage. That has been so for centuries.

Now, what is the result of the amendment? We have gone a long way from the idea of giving the procedural right of seizing the vessel when damage is done by it, and we now find under the amendment the seizural right will exist as a result of the amendment I have drawn your attention to earlier in

five different cases: first of all if the damage is done through the fault or negligence of the owner of the vessel which is quite proper and I do not criticize this part; secondly if the damage is done through the fault or negligence of the agent of the vessel; thirdly if the damage is done through the fault or negligence of the charterer of the vessel; fourthly, if the damage is done through the fault or negligence of the master of the vessel. There, again, I do not think one can criticize this provision. Fifthly, if the damage is done through the fault or negligence of the crew of the vessel acting in the course of their employment or on the orders of their superior officers. There, again, the rule of respondiat superior should apply, and there is no criticism directed against this provision.

The two provisions that we most strenuously oppose are the right to seize a vessel for damage done by the negligence of an agent and for damage done by the negligence of a charterer, because in either of these two cases the vessel owner may have had nothing to do with the act complained of. The vessel herself might be entirely unconnected with the damage done; the vessel might be out to sea or in Japan as far as we know, and there is no reason to make a vessel liable to seizure when she arrives in a harbour in Canada because the agent of that vessel has committed some negligence that has caused damage to the board's property. The right of seizure is a very serious remedy, so serious that in a good many maritime countries of the world now—and I refer particularly to France, Belgium and Italy—whenever a ship is seized in one of the ports of these countries the party seizing, if his claim is found unfounded, will be liable to pay a minimum of four days' detention, whether the ship was detained at all or not through the seizure, and four days' detention or demurrage of the vessel means a penalty ranging from $6,000 to $15,000 altogether. This shows the serious view that is taken in maritime countries of the right to seize.

Now, there is more, and I revert to the brief that is before you. The amendment says, "the agent of the vessel". These are the words used, but nowhere is there a definition of this expressoin, "the agent of the vessel". Therefore we must understand by it what is commonly known in marine circles as the vessel agent or husbanding agent. A vessel agent or a husbanding agent is in no way the representative of the owner of the vessel. He is simply, to use the expression I have coined for this purpose, a co-ordinator of services. When a vessel comes into a port, an agent will be appointed whose duties will be to make arrangements with the stevedores to load and discharge the ship, with the shipping master to sign on or sign off a crew, with the oil merchant to fill in the ship's bunkers, and with the customs officer to clear the vessel. He does that for a modest fee, and I will say to the committee that the usual fee is about $200 for these services, and I do not think an agent ever considers the possibility that he would be held liable, say, if the ship coming into the harbour should collide with some of the installations, say a wharf. The right to seize before existed only if the vessel was the instrument of the damage, and I repeat this is the way it should be and has always been. The result of this definition is very far-reaching, because it makes the ship or vessel owner liable for the agent and the charterer, and it also plays in such a way as to make the owner liable for the agent and the charterer. Let us take the case of a charterer. The amendment that is sought before this House does not define the charterer. There are many types of charterers in marine parlance. You may have a voyage charterer; you may have a time charterer; and you may have a demise charterer. The demise charterer is the one who operates the vessel, furnishes a crew, and he is really in the shoes of the owner, and there is no objection to making him liable for the damage that might be done by the vessel or by the crew, because the crew are his servants, and the vessel

is for all practical purposes his property. The case is quite different when you deal with a time charterer or a voyage charterer. The time charterer or voyage charterer is simply a shipper, but instead of shipping only one parcel of goods will ship enough to fill a ship, either his cargo or the cargo of others, but he has no control over the navigation of the vessel; he has no control over the crew, and has no connection at all in so far as the negligence of the crew might be concerned with the vessel's operation. Now, in this case, let us assume that a Canadian charterer were to charter a foreign vessel, and that this vessel would come here in one of our ports and cause damage to board property. Under the amendment, you will find the charterer liable for such damage. I can assure you that a charterer will not carry insurance to cover such a liability, and I doubt whether he could even get insurance for such a liability in the market. I know of no type of insurance that would cover such a risk, because the operation of the vessel is none of the business of the charterer at all. I am speaking of the case of the voyage or time charterer.

I have in the brief given an illustration to show, with all due respect to my friends here, how illogical the provisions could be, and the illustration I have chosen is this one. Let us assume that a charterer has a truck which he uses to take his goods, that have been discharged from the ship, from the dock to his own warehouse, and let us assume that his truck, while within board property, caused damage to, say, another truck or some installation of the board. Then the ship would be liable for arrest. I think this is a situation that will show how illogical this provision would be if it were allowed to stay as presently drafted. The same illustration could be given in the case of an agent. We have many agents in our ports. They have access to board property. They use trucks to move goods in and out of the limits of the harbours and if in doing so they cause damage to board property the vessel can be arrested. The crew of the vessel has nothing to do with this operation at all, nor the owner of the vessel. I am sure that it will be pointed out by the legal adviser to the board, as it has been pointed out to us earlier, that the present section gave the same right to the board.

I must very strongly—although respectfully—disagree with this, and I would like to refer this committee to section 16, subsection 2 of the present Act which reads as follows:

> (2) In a case coming within paragraphs (*c*) or (*d*) of subsection (1), the vessel may be seized and detained until the injury so done has been repaired and until all damages thereby directly or indirectly caused to the Board (including the expense of following, searching for, discovery and seizing of such vessel) have been paid to or security for such payment accepted by the Board; and for the amount of all such injury, damages, expenses and costs, the Board has a preferential lien upon the vessel and upon the proceeds thereof until payment has been made or adequate security has been given for such damages, whether direct or indirect, and for the amount of all such injury, damages, expenses and costs as may be awarded in any suit resulting therefrom, and the owner, charterer, master or agent of such vessel is also liable to the Board for all such injury, damages, expenses and costs.

So, after having giving the procedural right to seize, the law provides that the owner, charterer, master, or agent is also liable. It is substantive law that the owner be liable for damages done by the vessel and we must not forget that the right to seize only exists if the damage is done by the vessel or was caused by the crew, not by the agent or charterer.

I submit that it is perfectly legitimate to provide that the owner will be liable. I think one can question the logic of making the charterer or the agent

also liable. And I submit to you, gentlemen, that this provision from a practical point of view has really no consequence at all because of the way things operate; and I will explain that briefly.

Let us assume that a ship in docking at a wharf will hit the wharf and cause damage. The board has the procedural right to seize that vessel and will, in practice—the 18 years the Act has been in force proves it—move to seize that vessel.

Now, that vessel normally is insured, and I would say that in the case of a commercial vessel, it is always insured.

Immediately the right to seize is exercised, or notice is given that the vessel will be seized, the vessel owner, through his agent or insurance company will immediately contact the underwriters, and the underwriters will immediately, through their agent, put up what we call "bail" or security to guarantee that the vessel will be released and not detained.

Well, immediately the board has notice of security for its claim, and having security for its claim either in cash or in the form of a bond from an insurance company, it has no reason to go against the agent or the charterer and never has done so in the eighteen years the Act has been in force.

But I will go a little further. I will say that if the board, under the present Act, were to fail to seize a vessel either by negligence, oversight, or for any other reason, then, after the vessel has left, if it attempts to sue the agent, the Canadian agent or the Canadian charterer, I will say that the Canadian agent or the Canadian charterer can plead that his position has been prejudiced by the failure of the board to act and to seize the vessel. And it should not be forgotten that the agent has no right to seize because of possible liability he might incur if the board goes against him later on.

I will say this: that the agent and the charterer have the right to plead that they have been prejudiced and that the recourse against the agent and the charterer is only a secondary recourse, and a close scrutiny of the provisions of the Act, I submit, prove it, because the words used in the present Act referring to the owner-charterer being also liable to the board, are these:

> "For such injuries, damages, expenses and costs."

The "expenses", of course, refer to the expenses of seizing the vessel and the "costs" mean the legal costs incurred in the action following seizure. Therefore, the Act as it reads now foresaw that the primary recourse would be exercised.

Now, the amendment is quite different, and I would refer the committee to subsection 7 of section 16 which starts with these words:

> (7) Whether or not all or any of the rights of the board under this section are exercised by the board, the board may, in any case described in subsection (1), proceed against the owner of the vessel in any court of competent jurisdiction for the amount owing to the board (or for the balance thereof in the event of any sale contemplated by subsection (3)) and may also exercise against the owner of the vessel any other right or remedy available to the board at law.

The important words are "whether or not all or any of the rights of the board under this section are exercised..."

And that means, if I may paraphrase it, whether or not the board exercises its lien against the vessel and seizes the vessel, it will still have recourse against the agent and the charterer.

Therefore, we have done away entirely with the idea of exercising primary recourse against the vessel. The serious consequence which I want to place before this committee with respect to this section are these: let us assume a foreign ship comes in to one of our ports, and that she damages board property, and no steps are taken to seize her.

She leaves port. But some time later a claim is made against the agent who has acted for her while she was here, getting a modest fee of $200 to do it.

He may be faced with a liability of thousands of dollars, and we have seen cases where extensive damage and extensive claims have arisen as a result of damage caused by a ship to harbour installations.

The agent will be faced with this liability and with no way of catching up with the ship which is now out of the jurisdiction, and with no insurance to cover him because the liability insurance which a ship agent carries is only to cover his liability arising out of his operations as an agent, and not arising out of the navigation of the ship over which he has no control.

The same thing would happen to the charterer. We have firms in Canada which do charter a large number of vessels. I know of one firm in particular which has some 50 or 60 vessels under charter—under time charter, I mean—and I think it would be unfair to place upon this Canadian firm the burden of assuming liability for all damage which may be done within harbour limits by all the foreign vessels which are under charter to it.

These foreign vessels are covered by insurance, but the Canadian charterer would not be so covered.

I was explaining earlier that a shipowner now would not be covered by his insurance for damage done to board property by the agent or the charterer. I do not want to deal at too great length with marine insurance. I am sure that the committee knows there are two types of insurance which a shipowner carriers; one is called "hull and machinery insurance"; that covers him for damage done to his vessel and for damage done by his vessel to other vessels. And there is also what is called the protection and indemnity insurance which is a liability insurance covering the vessel owner against various liabilities that may accrue in the course of his operations; for instance, workmen's compensation claims, liability for damage to cargo, liability for injury to passengers on board ship or people ashore who might be injured by the vessel or its equipment. Let us take first of all hull and machinery insurance. That covers liability for collision with another vessel. Let us suppose the vessel comes into collision within harbour limits with a craft belonging to the harbour board. That risk will be covered by the hull policy, the risk of liability to the board, but the charterer of the ship or the agent of the ship will not be covered under that policy and will have no recourse against the vessel—that might be Norwegian, Swedish, British or American. I do not want to give to the committee too many illustrations, but dozens and scores of illustrations like the one I have just given could be found to illustrate the serious consequences that could flow from the amendments that are sought to be made to section 2 *e* (*ea*) and section 16.

Before closing there is just one other remark I would like to make which shows how far reaching the definition is and what effects it can have. In one particular instance it says that the vessel that is seized for having caused damage to board property can be sold if the claim is not paid and out of the proceeds of the sale the National Harbours Board is paid first and the excess is remitted to the owner which means that the excess of the sale price which remains after settling the board's claim can be given to the agent, the charterer or master of the vessel. The charterer has no interest at all in the proceeds of the sale of the vessel and the charterer may at that time have ended with the charter of the vessel months before. The agent who has acted for hundreds of ships and owners during the season will have closed his voyage account at the time this distribution takes place, and has no interest in the proceeds of that sale. Of course, I do not say that in practice it is likely to happen that the board will pay the agent if ever a vessel is sold and there remains some proceeds but it shows how illogical this provision is.

I have to say to the committee that I am here to criticize and oppose and not to suggest any constructive ideas concerning how the Act should read, but I want to point out to the board that during the 18 years the present Act has

been in force there has been no case—and I have asked the board to let me know if they have had any—where the board has been unable to collect in case of damage to board property, so the Act as it presently is has always served its purpose and I submit that it should remain as is or if any amendments have to be made there may be one that should be recommended and that is that the reference to charterer and agent in section 16 be deleted and replaced with the words: "Charterer by demise" because it is quite correct in law and in principle that the charterer by demise who stands for the owner of the vessel and who is responsible to the same extent as the owner of the vessel is liable to the board for damage to board property. With this, gentlemen, I will close my remarks. I thank you for the attention you have given me.

The ACTING CHAIRMAN: Thank you, Mr. Brisset. Is it the wish of the committee to hear Mr. Finlay the legal adviser to the National Harbours Board before we begin our questioning?

Hon. MEMBERS: Agreed.

The ACTING CHAIRMAN: Mr. Finlay?

Mr. JOHN F. FINLAY (*Legal Adviser, National Harbours Board*): Mr. Chairman and gentlemen, I believe that it would be correct to say that actually the representations made by counsel for the federation can be perhaps summarized in two points. The first contention, I believe, is that under the proposed bill it would now be possible to seize a vessel for damage done by an agent or charterer where the vessel has not been the noxious physical instrument of the damage. Now as regards that point may I first point out that under the ordinary rules of agency law if the damage was done to board property by an agent of the vessel there would be no reason why the vessel could not be seized. Now one point should be acknowledged immediately, and that is that the vessel would not be seized at once. In that case action could be taken against the agent or owner of the vessel. Under the ordinary rules of agency law; judgment having been obtained, the vessel could be seized. There is actually very little difference in that respect. Now, of course, a great deal of emphasis was placed by counsel for the federation on the term "agent" and he referred to the assumption that we must adopt the ordinary commercial or mercantile meaning of the term. As it is commonly used a firm may describe themselves as ships' agents, but with all deference I submit we are dealing here with legislation and when the term "agent" is used it has a very definite connotation at law and it means "agent" as that term in recognized and known at law and not as it may be known commercially or by particular groups who choose to call themselves ships agents. The Act refers to an agent of the vessel which means a legal agent of the vessel. In the past there has never been any question under the ordinary rules of agency law. Quite apart from this bill there has been no difficulty or argument at all about the fact that the principal is liable for the negligence of his agent. We have always been able to proceed against the principal for the negligence of his agent and having obtained judgment against the principal we could seize his vessel. To the extent that this bill could be regarded as effecting any alteration in that regard the only difference it makes is that the board would be able to seize the vessel in order to obtain security before obtaining judgment but it must be noted that the Bill does not provide that we seize the vessel and sell her before judgment. The only provision is that we may now seize the vessel until we have obtained security. Having obtained that, we release the vessel. So far as the liability of the principal is concerned I submit that liability has always existed and that agent of the vessel means agent at law. We are after all dealing with a statute, proposed piece of legislation, and the terms must be given their legal connotation and not their mercantile or commercial connotation.

Another point made by counsel was the reference to charterer. He referred to the fact that there are, of course, at least three types of charterers: time, voyage, and demise. That is perfectly true. I submit that here the term charterer would be interpreted as meaning charterer by demise. The bill speaks of charterer of the vessel. A time charterer—or a voyage charterer is not strictly speaking a charterer of the vesesel as such. But, assuming for the moment that "the term" is fallacious and that it does cover all types of charterers, then under the existing Act the provision is that where the vessel has been the physical instrument of the damage, the charterer may be held liable for all damages. In other words, if charterer is to be given that wide connotation to cover not only charterer by demise, but also time charterer and voyage charterer, then the voyage or time charterer has always been liable in damages for physical injury done by the ship itself over which he had no control. The point is that we suggest we are not actually enlarging the law in that respect, except possibly to this extent that it may be admitted that in the past it has certainly and indisputably been necessary that the vessel herself should have done the damage before the vessel could be seized; whereas the damage may be done by the agent or charterer, without the vessel herself being the actual instrument. But, with deference I suggest after all where is the injustice in that? Granting the relationship of agency or charter, why should the vessel not be liable for seizure for damage done by the owner or legal agent of that owner? If the individual himself is liable in law, where is the injustice of making the vessel liable to seizure as security.

Mr. MURPHY (*Lambton West*): What do you mean by legal agent?

Mr. FINLAY: The point there is that the counsel for the federation—I believe I correctly interpret his representation in that respect—was suggesting that because the bill uses the term agent of the vessel that term might be interpreted as covering a much wider range than the ordinary phrase agent at law. An agent at law has very definite connotations. It is a very definite relationship to the principal.

Mr. MURPHY (*Lambton West*): I would like to have that cleared up.

The ACTING CHAIRMAN: We will reassemble immediately after the division.

(The meeting adjourned for a division in the House.)

The ACTING CHAIRMAN: Gentlemen, we have a quorum.

Mr. Finlay will continue his presentation.

Mr. FINLAY: I believe at the time the committee adjourned the particular question put was: the definition or the meaning of the term "agent of vessel". Strictly speaking at law the term agent has a very definite connotation. It is the person who is standing in the shoes of the individual he represents. Everything he does is the act of the principal and the principal is responsible directly for anything that that man may do. That is the legal definition of agent—agent at law. There are, however, people who may call themselves ships agents and are not necessarily agents at all in the legal sense. They may be independent contractors or chandlers or suppliers of ships' equipment. The ship may want certain supplies or material. A firm may very well call itself a firm of ships' agent and supply those materials to the ships. I suggest, however, that that firm is not an agent of the vessel within the legal meaning of the term. It is not an agent of the owner of the vessel. It is not acting for him; it is simply in the position of an independent contractor. Anybody from whom you may buy equipment or who you may have do some work for you is not your agent; he is a contractor doing work for you. That I suggest is the position of the vast majority of so-called ships' agents. But, we are not dealing here with commercial phraseology but with a statute. In a statute,

I submit, that the only meaning that can be given to agent is the legal meaning of that term; a man who stands directly in the shoes of his principal; a man who is responsible and acting under the authority and under the orders of another person and whose actions are at law ascribed to his principal. An employee, for instance, would be an agent of his employer. The National Harbours Board is an agent of the crown. Everything that the National Harbours Board does is an act of the crown from a legal standpoint. On the other hand in the case of a contractor building your home, in that case the contractor is not your agent. The things which he does are not necessarily attributable to you at law. But, if you employ somebody directly on wages or salary to do a certain work for you, that man then would be your agent. The prime point here is as I say the contention of the board is that agent of the vessel means legal agent and that consequently there is no reason why the vessel—in addition to the owner of the vessel—should not be liable for every act. All we are doing is repeating our right to seize the vessel by way of security if the person for whom he is responsible does any act which damages board proporty. Have I made that point sufficiently clear, Mr. Chairman?

Mr. WINCH: You certainly have not made it clear to me.

Mr. NICHOLSON: I wonder if Mr. Finlay would clear this point: I found myself a supernumerary to a ship belonging to the Standard Steamship Company. This ship was chartered to the Rank Milling Company, the Montreal Steamship Company was the agent, and it drew a cargo from Churchill to London. Assuming that $5,000 damage was done to the National Harbour Board at Churchill, I understand that if the Act passes that the Montreal Shipping Company or the Rank Milling Company could be liable for this $5,000 damage if the National Harbour Board should be negligent and the ship got away and it was later found out that damage was done. It occurred to me from the evidence given by Mr. Brisset that either the Montreal Shipping Company or the Rank Milling Company could be liable for this damage for which they have no responsibility.

Mr. FINLAY: Assuming that there was an agent relationship between them.

Mr. NICHOLSON: They were the Churchill agents.

Mr. FINLAY: Well, assuming for the moment the agency relationship—again the legal agency. It is difficult to say without nailing it down to particular facts whether or not the individual is an agent. He may be an agent or may be an independent contractor.

Mr. CONACHER: Assume he is the agent.

Mr. FINLAY: The Montreal Shipping Company could be held liable, and as a matter of fact that is not new; that is true under the existing Act. If a foreign vessel does damage the port property under the present Act, then the board can sue the agent of that vessel.

Mr. NICHOLSON: How about the Rank Milling Company? Would they be liable?

Mr. FINLAY: Certainly, if they are the charterers of that vessel.

Mr. WINCH: May we ask questions now?

The ACTING CHAIRMAN: Would you prefer to finish the statement?

Mr. MURPHY (*Lambton West*): Could you give some illustrations of agents.

Mr. FINLAY: Yes. The best example and the simplest one is simply that of an employee. Any employee would be the agent of his employer so long as he was acting as an employee. The National Harbours Board is an agent of the Crown; that is everything it does is the act of the Crown from the legal standpoint. On the other hand, in an illustration I mentioned before you may

have a building contractor; he is not the agent, he is doing some work for you but he is an independent contractor. He is not directly in your shoes from the legal standpoint.

Mr. NICHOLSON: I wonder if the witness could clear up this point. The Montreal Shipping Company imposes a very small fee for the service rendered to the Standard Steamship Company while the ship is in Churchill loaded and waiting. The other witness indicated that the Stag Steamship Company was covered by insurance adequately. So if there was damage done the insurance would cover it. It seems to me that it would be a hardship on Montreal Shipping Company if they were asked to cover damage amounting to thousands of dollars, and the same thing with the Rank Milling Company. I would not imagine that they would be liable to pay a fee for transporting grain from Churchill to their mill. It would not appear to me that they should be responsible for the errors made by the Stag Steamship Company.

Mr. FINLAY: I believe that the answer there, of course, is that they themselves are, so to speak, in the business. They have chosen to put themselves in the position of agents for that vessel. There is no injustice. You said that they are receiving a small fee and that consequently it is unfair to charge them with the liability incurred by the vessel. Well, with deference, I suggest that the National Harbours Board is receiving an even smaller fee for the use of this harbour, and yet we may have half a million dollars damage. Who is to pay for that?

Mr. NICHOLSON: Both the agents' offices in Churchill and in London, England—certainly the London offices that looked after the Stag operations were a very modest company. I think a $15,000 bill would probably put the firm out of business, but the Stag Steamship Company got a sizable amount and were making a good return for the transporting of grain. I think the insurance rates were very high, and it seemed to me that if the agents were liable to this extent they would have to raise their fees a good deal or one bad accident would put them out of business.

Mr. FINLAY: There is one point that should not be overlooked in that connection, that there is absolutely nothing to preclude the agent from joining his principal. If the vessel has done the damage there is nothing to prevent the Montreal Shipping Company, if in fact its principal is supplied with adequate funds, from joining its principal in any action that we may take against it.

Mr. SMITH: He can call him in warranty.

Mr. LANGLOIS (*Gaspe*): The agent may call in the owner warranty if the agent is held responsible for damages caused by the owner; then the insurer of the owner steps in and the owner is covered.

Mr. BRISSET: We do not agree with that. The ship might have left by that time.

Mr. LANGLOIS: But the insurance coverage protects the owner.

The ACTING CHAIRMAN: Order. Let us have this cleared up.

Mr. WINCH: I wanted clarified in my own thinking what I understood was said by Mr. Finlay. I understand that earlier in your remarks you made mention of a charterer on a voyage. I am not quite certain of the term.

Mr. FINLAY: A demise charterer.

Mr. WINCH: I understand you said that a voyage charterer could or should be held responsible if required?

Mr. FINLAY: Yes, a demise charterer.

Mr. WINCH: If that is my understanding, I would like to have a clarification of what that means. For example, any of my friends here of the Liberal party, Conservatives, Socreds or C.C.F., as happens very often in my city of Van-

couver, may charter a ship over to, say, Newcastle island, or something of that nature, and they have a voyage charter. Do I understand that your position on this amendment and your opinion is that in the event that the harbour board is not able to lay a claim or collect a claim from the ship you should then have the right to lay a claim against the voyage charterer?

Mr. FINLAY: No. Our contention is that, first, the term "charterer" should be given the connotation of "charterer by demise". He is the person who actually becomes the temporary owner of the ship. That would not apply in your example which, I take it, would be more in the nature of a pleasure expedition. You do not take over the vessel; in other words, you simply make arrangements with a steamship company.

Mr. WINCH: But are you not chartering that for the entire voyage?

Mr. FINLAY: You are chartering it, but that is not what is known by a charter by demise. In a charter by demise, the charterer is, in other words to use the other term in common law the tenant, so to speak of the vessel, the lessee. It is a temporary transfer of title. He takes the ship, including the crew and the master all under his control. That is a charter by demise. In the example you cite, that would be merely a voyage charterer.

Mr. WINCH: That is exactly the term you used when you spoke, a voyage charterer.

Mr. FINLAY: Yes, a demise charterer.

Mr. WINCH: Now you are changing it.

Mr. FINLAY: No.

Mr. WINCH: I would like to have that explained if I may.

The ACTING CHAIRMAN: I think we will have to accept the statement made by Mr. Finlay rather than what you assumed he said on an earlier occasion.

Mr. NICHOLSON: Assuming that the boat gets away from Churchill because of the laxity of the Harbours Board and the claim is later made against the Montreal Shipping Company, it seems to me to be unfair to have the Montreal Shipping Company liable for a claim because the National Harbours Board had failed to seize the vessel at the time the damage was done. Would you care to comment on that?

Mr. FINLAY: First, I would submit that under the present Act that is the situation, that is to say, that the board is perfectly free under the Act as it stands to do just that, but more important than that point is this. The term used by the counsel for the federation is "if the board is negligent in allowing the vessel to escape", but I suggest that there is no reason why the board should be regarded as under any obligation to seize that vessel. Why should we? If an individual does damage with some other instrument, why should it be considered incumbent upon the injured party to necessarily seize the instrument? Certainly we ordinarily do, but supposing that we do not, and of course we may not through many circumstances? There have been two cases at least within recent years in Vancouver where we did not seize the vessel, simply because we did not know of the damage until after the vessel had sailed. That was an excellent example of the kind of thing that can happen. However, supposing we do not? Supposing that there is laxity of some sort on the board's part and that we do not seize the vessel, the suggestion made by the shipping federation is that under the present Act, unless we had chosen to seize the vessel in the first instance, we would not be able to sue, let us say, the Canadian agent or the Canadian charterer, this being a foreign vessel in the example cited, but, with deference, I would disagree with that. I would suggest that there will not be found any decision of any court in which it has ever been held that a party was obliged to exercise both remedies. There have been cases where a court has said that where one remedy was exercised

the party has not been free to exercise the other, but I know of no case where it has ever been said that anybody was under an obligation to exercise both remedies available to him.

Our submission is that it has been put or represented as an injustice to the Canadian agent or charterer if the board should fail to seize the vessel. With all deference, I submit that with the board as the injured party, why should it be incumbent on the board to do it? We will certainly do it in most cases to protect our own interests; but if we should fail to do it, I suggest that it can hardly be attributed to us as a fault.

Mr. WINCH: I would like to have clarification, Mr. Chairman. The witness in his remarks made a differentiation between a voyage charter and a charter by time. What is the difference? In your first remarks you very definitely said "voyage charter".

Mr. FINLAY: The best example I can give is to use an ordinary analogy. A charterer by demise is equivalent to the tenant of a house. He takes over the whole affair completely and he becomes the temporary owner. He has almost ownership rights, certainly in relation to a third party and even, to some extent, against the landlord. He is the temporary owner, and that is equivalent to a charter by demise.

The tenant of the house may have his own lodgers if he wishes, and the same is the case with respect to the charterer by demise; he may hire his own crew and officers; he takes over the ship completely.

On the other hand, the voyage charterer would ordinarily take the vessel but with the owner's crew and master on board, and probably only to the extent of having the vessel make a voyage from point "A" to point "B" or make certain cruises within a certain period of time in order to transfer the cargo from one point to another. He is not the temporary owner of the vessel, and the master is not necessarily under his control. Therefore, you could have a situation where damage was done by a vessel without that type of charterer actually being responsible.

Mr. WINCH: Mr. Chairman, can we take it as a committee that it is clear thay neither the intent of the government or of the board, from a reading of this amending Act, has any effect upon any claim for damages against the voyage charterer?

Mr. FINLAY: That is correct.

The ACTING CHAIRMAN: Now, Mr. Conacher.

Mr. CONACHER: What are the laws governing on this particular point, let us say in Great Britain or the United States?

Mr. FINLAY: With regard to charters?

Mr. CONACHER: No. In regard to the liability of the agent.

Mr. FINLAY: As regards the liability of the agent, I know of no legislation in the United Kingdom which corresponds precisely to this.

Mr. CONACHER: Is this more drastic in regard to the agent?

Mr. FINLAY: It is more drastic, let us say, in its terminology because it mentions the agent whereas the English legislation does not. But our submission is that in any case the principal is liable for the acts of his agent.

I might say that the introduction of the term "agent" is not something adopted by the National Harbours Board, from its inception in 1936. It has appeared in the Harbour Commission Acts of Canada for at least half a century. Therefore, there is nothing new—no innovation there.

The ACTING CHAIRMAN: Now, Mr. Hosking.

Mr. HOSKING: I have a question about the Montreal Shipping Company, but before I ask that question I would like to ask in regard to the chartering

of ships for a voyage. As it was suggested, is that not the same position exactly as a person renting a taxicab with the driver and riding in that taxi as a passenger; he cannot be assessed for any damages done by the taxicab under the control of its driver?

Mr. FINLAY: Precisely.

Mr. HOSKING: But if you rented a vehicle yourself, and you become the driver, then you are responsible.

Mr. FINLAY: I think that is an excellent example; it shows the contrast between a "drive yourself" and a taxicab.

Mr. HOSKING: Could you tell us just how this Montreal shipping company could be in a position like the person who rents a taxi to drive himself?

Mr. FINLAY: Oh, yes.

Mr. HOSKING: In order for the shipping company to be liable, how could they get themselves around the position where they could be considered as the person who rents a car to do the driving himself?

Mr. FINLAY: So far as the Montreal Shipping Company is concerned, in the example or illustration mentioned, that was not the case of a charterer. In the example that you mention, that of the taxicab and the drive-yourself, that applies to the charterer. The Montreal Shipping Company would be liable, not as a charterer but as an agent.

Mr. HOSKING: As I understood it, the charterer and agent were the same thing.

Mr. FINLAY: Oh, no.

Mr. HOSKING: He had assumed responsibility for handling the vessel.

Mr. FINLAY: Not necessarily; in the case of the agent, the agent might do any act as an agent; he might or might not have to do with the handling of the vessel; but if he was going—suppose the owner of the vessel instructed the Montreal Shipping Company as his agent to, let us say, prepare for the arrival of one of his ships. The Montreal Shipping Company, acting as his agent at law, would go down to the wharf at Montreal, and let us say, through its negligence there was a fire. In that case there was no act of the vessel; the vessel is not involved as such; but nevertheless the vessel owners could be held liable because the Montreal Shipping Company were acting as their agents.

Mr. HOSKING: Isn't that rather a far-fetched case, for an agent to go down and start a fire?

Mr. FINLAY: Yes, it is rather a far-fetched example, admittedly; and the most common application would be in the case where you could have the contingency of a foreign vessel, possibly without assets, doing damage.

Mr. HOSKING: It is not too clear in my mind about the captain of the ship. The Montreal Shipping Company or the agent cannot give any authority, as I understand it, or have anything to do with the sailing of that vessel; therefore he is not in a position to create the damage which, I understand, under this Act you want to make him liable for.

Mr. FINLAY: Oh!

Mr. HOSKING: Just a moment; the other point is that in the confusion the agent is sued for the damages, while the insurance company or the underwriters of the ship, in some sense could get, under a legal technicality, where they would not be able to sue the person who actually is responsible, but would sue the agent who probably cannot be in a position to pay; and the originator of the crime or the damages could get off scotfree.

Mr. FINLAY: I suggest there that the originator would not get off scotfree. There is nothing to prevent—assuming in the example which you cite that

the principal is actually responsible for the damage—we still have the right to proceed against the agent, against the Canadian agent; we can do that and there is nothing to prevent the Canadian agent from joining his principal.

Mr. HOSKING: Only distance.

Mr. FINLAY: Yes, only distance; but that applies equally to us.

Mr. HOSKING: It seems to me that this Act is trying to allow the board to get their money where they could not get it before, that is, they are trying to get it from an intermediary, from an innocent bystander, so that they may collect.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, he is not an innocent bystander. What we are asking in the proposal, or what is being asked of this committee by the representations we have heard today from council for the National Federation of Shipping is that the board, the National Harbours Board, prejudice its own case, its own recourse for damages caused to its property in not having a proper recourse against the agent of the owners of the ship; and if this agent needs protection, it is up to him or the owners to provide it when they contract for this agency, between themselves.

For example, there is nothing to prevent the agent from securing some kind of guarantee from the owner of the ship, if he is to be held responsible for damages caused by the ship.

On the other hand, the same thing might be done and can be done by the owner of the ship, for any action done by his agent. It is a matter of contractual conditions between the owners of the ship and the agent, and it is up to them to protect themselves.

After all, these contracts, these agency contracts, are not entered into between the board and the agent or the owners, but between the owners and the agent. It is up to them to clarify their respective position in respect to one another and not up to the board.

Hypothetical cases have been cited here today and I wish also to cite one. Here in Canada, you have agents of ships who have no physical assets in Canada. They occupy premises which are leased from the National Harbours Board. They are agents for foreign ships. When the ships are gone—and assuming the fact the agent has no physical assets here, what recourse then does the board have for damages caused to the board's property in connection with the operation of these ships? That is why I wish to point out that by accepting the representations that have been made here this afternoon we might prejudice the position of the board and we are doing it for the sole purpose of relieving the owners and the agents from their own responsibility to otherwise protect each other as they may see fit. While I am speaking on that point, in order to clarify the matter, I might state, for the consideration of the committee, the policy of the department concerning representations. Although we are not prepared to accept and we will have to oppose any possible amendment to clause 1 aiming at the restriction of the definition of an owner of a ship by deleting the words "agent, the charterer or the master of the vessel"—

Mr. WINCH: Would you repeat what you just said?

Mr. LANGLOIS (*Gaspe*): Although we will have to oppose any possible change to the first part of clause 1 dealing with the definition of owner as suggested—I am speaking for the department and on behalf of the minister just now—we would be prepared to meet half way—if I may express myself in this manner—the request or representations made by counsel for the Shipping Federation of Canada and this could more properly be done under clause 8. We have even gone so far as to prepare a tentative amendment which would be acceptable to the department and to the board. When we come to clause 8 I will read this proposed amendment, if the committee will permit me, and

I will leave the fate of this amendment in the hands of the committee. However, I will then feel bound to warn the committee that we must be very careful not to cause prejudice to the position of the board in any of the possible future cases that might arise, where the only worthwhile recourse of the board for damages caused to its property would be by seizure of the vessel, because in some instances it might happen that the agent has no physical assets and then any recourse against him would be futile.

Mr. WINCH: The reason I asked that is to find out—and I think it is a matter of procedure, sir, which would help us—in view of the statement that the department cannot consider any change in clause 1 and in view of the fact they have a recommendation concerning clause 8, is it possible or permissible that we have some indication of what the change will be in clause 8?

Mr. LANGLOIS (*Gaspe*): Perhaps we would be anticipating the discussion on clause 8, but I have no objection and I am in the hands of the committee.

Mr. GREEN: I think it is a little premature for the parliamentary assistant to say that no matter what the committee might wish the department will not change—

Mr. LANGLOIS (*Gaspe*): I did not say that. On a point of order, Mr. Chairman, I did not say that. I said that we would have to object to any amendments along the lines suggested this afternoon to clause 1 and that is a statement of policy of the department.

Mr. GREEN: We are an independent committee of the House, and we are not in a position to be given an ultimatum of that kind.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I must object to that on a point of order. The honourable member is putting words into my mouth which I have never spoken. As I said, as a representative of the minister and as a member of this committee, all what I have said is that I would have to oppose any amendment to clause 1 along the lines suggested this afternoon leaving the final decision to the committee. I am entitled to say that.

Mr. GREEN: I do not think you are. This is the first time I have ever heard a minister, let alone a parliamentary assistant, come into a committee and before we are finished hearing the representations for considering a revision, we are told that the department is not willing to change and I am quite sure that the Honourable Mr. Chevrier would not take that position because—

Mr. LANGLOIS (*Gaspé*): I never said anything of the kind—

Mr. GREEN: —we are here to study this bill which went through the House with practically no discussion on the understanding it would be given adequate study in this committee. It is not a political matter at all. There are no politics in it for anybody, but believe me, for some of the ports in Canada it is a mighty vital bill and I know this bill is extremely important to my own port of Vancouver, and we are far more concerned about retaining the shipping business there than we are about giving the National Harbours Board extra powers. I presume every one of the national ports will be in that position. It is the business that goes through the port that is important and not the giving to the board of a club to handle the people who are doing the business which goes through the ports. I would like to ask Mr. Finlay, in the first place, how much the National Harbours Board has lost by reason of failure to recover for damages done to its property by vessels?

The ACTING CHAIRMAN: Could you answer that, Mr. Finlay?

Mr. FINLAY: The answer to that question, Mr. Chairman, is—

Mr. CAMPBELL: Please speak a little louder.

Mr. FINLAY: —the answer to that question, Mr. Chairman, is that up to the moment we have always succeeded in recovering. However, I submit that that is no indication that we will necessarily continue to do so.

Mr. NICHOLSON: 18 years—that is pretty good.

Mr. FINLAY: Yes, but it could happen very easily.

The ACTING CHAIRMAN: Mr. Green has the floor.

Mr. GREEN: This bill has been in effect for 18 years, and under the provisions of this bill you have not lost one cent so far as damage done by vessels to harbour board property is concerned.

Mr. FINLAY: That is to say by reason of the existing machinery for seizure of the vessels.

Mr. GREEN: No, but all I want to know is whether you have lost any money by reason of damage done to your property by vessels since the National Harbours Board was set up in 1936?

Mr. FINLAY: We have certainly lost money in the sense that we have had to sue for it. We have recovered it at very considerable legal costs in a great many instances.

Mr. GREEN: You have been compensated for all the damage that has been suffered?

Mr. FINLAY: Because there have always been one or two factors involved. One or two circumstances have always prevailed in these cases. In the majority of cases we were able to seize the vessel and thus obtain security and in some other cases we were fortunate enough to have a Canadian owner whom we could immediately sue.

Mr. GREEN: You are in the position under your present statute, let alone any of these new amendments, to seize the vessel, in the first place, if there is any damage done to your property, are you not?

Mr. FINLAY: If the damage is done by the vessel; but, supposing the damage is done by the agent of the vessel.

Mr. GREEN: How on earth can an agent of a vessel damage your docks?

Mr. FINLAY: That can happen.

Mr. CONACHER: Has it happened up until now?

Mr. FINLAY: No, it has not happened by a party acting at that time as an agent of a particular vessel. But, it has happened in at least one instance that we have suffered considerable damage through the negligence of one company which does act for the most part as an agent of vessels. In this instance it was not acting as the agent of any particular vessel, it is true. We are instituting action against that company now.

Mr. GREEN: What sort of damage was that?

Mr. FINLAY: Fire damage.

Mr. GREEN: An agent acting under direction was responsible for starting a fire. Is that right?

Mr. FINLAY: That is so.

Mr. GREEN: What on earth has that got to do with the vessel?

Mr. FINLAY: The vessel is simply taken as security.

Mr. GREEN: You would be able to take a vessel belonging to somebody else to pay you for damage caused by fire started by an agent?

Mr. FINLAY: That is so, and, of course, if there never was an amendment to the Harbours Board Act, if the Harbours Board Act did not exist in its present form, we could proceed against the agent in a case such as I have cited—We could proceed against the principal or the employer for the damage done by his agent, and having succeeded in an action against him we could take his vessel.

Mr. GREEN: You could not do that unless the agent was acting in the specific business of the owner of the ship and started a fire for the owner.

Mr. FINLAY: Yes.

Mr. GREEN: You have your rights under the present Act to seize the vessel for any damage it does.

Mr. FINLAY: That the vessel does.

Mr. GREEN: Yes. That is a big security, is it not?

Mr. FINLAY: It may be.

Mr. GREEN: And if your people were on their toes it would be mighty hard for a vessel to get out of port where it has done damage to your property.

Mr. FINLAY: We have had several instances where a vessel has sailed without the damage being discovered until after the vessel had sailed.

Mr. GREEN: And you have always got all the money?

Mr. FINLAY: Yes, but again in those cases the owner happened to be in Canada.

Mr. GREEN: You have collected in every case to date?

Mr. FINLAY: That is right, but of course it could have happened this afternoon that a foreign ship did that damage.

Mr. GREEN: Whether a foreign ship or a Canadian ship you have never lost a penny because of damage done by a vessel to any of your docks?

Mr. FINLAY: No, but because of the very obvious possibility of it happening we are attempting to guard against that.

Mr. GREEN: The trouble with that is you put up barriers to ships going to come into Vancouver, Halifax, St. John, or Montreal, if they are faced with all these provisions. As you know we are in very keen competition with ports like Seattle and Portland, and a port cannot carry on business if the National Harbours Board is going to take all these powers which it does not need.

Mr. FINLAY: I might say that there is one power which is far more extensive than anything actually which we are seeking here. At least more extensive in one sense. That is, under the Harbours, Docks and Piers Act of the United Kingdom, in that the vessel can be seized and retained for charges incurred by a shipper.

Mr. GREEN: You have the right to seize the vessel for damage done and in addition to that you have the right to sue in the ordinary course.

Mr. FINLAY: Yes.

Mr. GREEN: And you have the right as a litigant has, or as anyone else has, to have the ship libelled so that it cannot leave the port until security is obtained.

Mr. FINLAY: That is the right we are attempting to provide.

Mr. GREEN: You have that right now. If a vessel damages your docks you have the right to seize it.

Mr. FINLAY: If the vessel does the damage. But, suppose the damage is not done by the vessel as a physical instrument?

Mr. GREEN: Why should the vessel be responsible for the damage not done by the vessel?

Mr. FINLAY: For the same reason the property of any person may be responsible for the damage.

Mr. GREEN: If you sue just as any other litigant would do you can have that ship seized before it leaves port and you can force security to be put up for the damages before the ship can clear.

Mr. FINLAY: Of course so can the agent.

Mr. GREEN: Of what?

Mr. FINLAY: So can the Canadian agent.

Mr. GREEN: Why should the agent have to do that? Why do you not assume some of your responsibilities? You are in business in these ports. Why not act like any firm has to do and go to the courts. Why do you want to have all these special checks?

Mr. FINLAY: As I say there is nothing new in the principle of seizing the vessel at all.

The ACTING CHAIRMAN: Might I make a suggestion to this committee. It appears that most of the objections have to do with clause 8. Would it be the wish of the committee to hear the amendments which are being suggested?

Mr. GREEN: My objection is not only to clause 8. I think this definition of an owner goes altogether too far. They have a law now and the owner is not defined at all. In other words, it is "owner" as an ordinary man would interpret that definition; that is as it should be. Here you have a section which is dragging in the agent and charterer. Then you go down to goods. The representations made today are being made on behalf of the shipping people. But come to the people shipping their goods. Look at how it defines owner of goods. It is much worse. It includes the agent, sender, consignee or the bailee of the goods as well as the carrier of the goods; they are defined as owner. Now, I think that that section goes much too far and the Act should be left as it is. There is no need whatever for a definition of owner, certainly as far as vessels are concerned. Mr. Finlay has proved that they do not need one thing further. They have collected everything owed to them and who else in the country has been in that fortunate position in the last 18 years. I think that when we go into this question of owner of goods we will find it is the same type of legislation, and that the National Harbours Board are trying to get a club to make it possible for them to seize anything whatever to do with the goods. I do not think it is good legislation and I think that the main purpose of this committee is to go over this question of the definition of an owner.

Mr. LANGLOIS (*Gaspe*): With respect to the question of owner of goods, if the honourable member will read the explanatory notes of the bill, he will see that in many instances the only direct contact which the board has, is with the carriers and bailees and not with the owner of the goods.

Mr. GREEN: You have the very proof by the statement of Mr. Finlay that the Harbours Board has been in this position for 18 years and has not lost a cent.

Mr. LANGLOIS (*Gaspe*): He was not talking about the owners of the goods.

Mr. GREEN: They have not lost one cent for damage done by vessels to their property. Why on earth do they have to come in and ask us for wider powers?

The ACTING CHAIRMAN: Has Mr. Finlay completed his statement?

Mr. WINCH: If I may, I believe that Mr. Green has pinpointed the reason why I asked if it is possible for us to have an understanding as to what is involved under clause 8. I did not mention it before because under section 1 we have the new definition of owner. I have read very carefully the explanatory notes on this section and, quite honestly, I cannot see how it is possible at all under the purpose and import as outlined by Mr. Finlay to place the consignee or the owner or the carrier or the agent that is handling the goods on a ship as having a responsibility for a claim of damage. I think that the whole thing is so important and involved that I would like to have a very

clear explanation, and I honestly think it would help us a great deal if either the executive assistant or Mr. Finlay would explain what they have in mind on other sections, because it may change my owner thinking on section 1.

Mr. LANGLOIS (*Gaspe*): I am in the hands of the committee.

The ACTING CHAIRMAN: Is it agreed?

Agreed.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, we consider that the main objection made to this legislation by the Shipping Federation of Canada is that they fear that section 16 (1)(b) and 16 (1)(c) of the bill, dealing respectively with damage to board property and obstruction to board operations, might permit the seizure of a vessel in instances where neither the vessel nor the crew was in fact responsible. I think that was the main point made here this afternoon by Mr. Brisset, counsel for the federation. The federation also considers that the effect of section 16 (7) of the bill is to confer upon the board a right which in the federation's opinion did not previously exist. That is the right to institute litigation against a charterer, agent and so forth, without power of seizure of the vessel. We are prepared to meet part of the representations made by the federation, and we feel that this could be done when clause 8 comes under consideration by the committee. For the purpose of enlightening and helping the discussion before this committee, we have prepared an amendment which we would be ready to accept, provided the committee is agreeable. It deals with clause 8. If I may be allowed to read it and put it on the record, I am ready to do so. The amendment would be to the following effect:

> That clause 8 of Bill No. 421 (An Act to amend the National Harbours Board Act) be amended by the deletion of paragraphs (b) and (c) of subsection 1 of the proposed section 16 and their replacement by the following:
>
> (*b*) Property under the administration of the Board has been damaged by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of his superior officers.
>
> (*c*) Obstruction to the performance of any duty or function of the Board or its officers or employees has been made or offered by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been sustained by the Board.

Mr. WINCH: All you have done is take out the word "owner".

Mr. LANGLOIS (*Gaspe*): If you will look at clause 8, you will readily see the difference there.

Mr. WINCH: You have taken out the word "owner". That is the key point of it?

Mr. LANGLOIS (*Gaspe*): That is right.

Mr. BELL: I would like to point out that you have the word "owner" in section 18 in the National Harbours Board Act, to which this new section refers. There may be ambiguity there.

Mr. NICHOLSON: I presume that we are back in No. 1. We just had this for information?

Mr. LANGLOIS (*Gaspe*): Because the two clauses are closely linked to the representations made.

Mr. WINCH: Would the changing of this clause 8 under the proposed amendment come up for discussion under 8? Would that in no way conflict with the authority of the board as given under section 1 of the amendment, because you designate the powers?

Mr. FINLAY: No, it would not conflict. Let us say, assuming that amendment were made to the bill, that would not conflict with the definition of the terminology used in that subsection (*ea*).

Mr. WINCH: You could not use the powers of section 1 to be exercised under 8 as it might be amended.

Mr. FINLAY: You could not seize the vessel unless the vessel were the physical instrument of the damage, that is, either the vessel or its crew, but that has always been the case.

Mr. GREEN: You still have the word "owner" in clause (*d*), subsection (v) of section 16.

Mr. FINLAY: That is correct.

Mr. GREEN: You also have "owner in (*e*) and (*f*).

Mr. FINLAY: Yes, and those are cases—

Mr. GREEN: Under (*d*) you have the power to seize.

Mr. FINLAY: Yes, but as a matter of fact that is a provision which also exists in the United Kingdom and which in any event, I think, is perhaps of small practical, importance, because the amount of tolls would be small. In other words, these particular subsections are the cases where great damage might be done and great liability incurred.

Mr. HOSKING: Referring to section 1 (*ea*), if a foreign ship comes into our harbour and we have a company who are going to load that foreign ship with sand, they would be "in the case of goods, the sender". If this ship proceeded into a harbour and damaged a wharf, could this company that was going to ship the sand in that ship be sued for the damages done by the ship?

Mr. FINLAY: Oh no, because in that case, as you have it there, the sand company is the agent, you might say, in respect of goods, but it is not the agent of the vessel.

Mr. HOSKING: You could not be responsible for any damage done by the negligence of the captain of the ship?

Mr. FINLAY: No.

Mr. HOSKING: Now, suppose they start to load the sand on this ship.

Mr. FINLAY: Yes.

Mr. HOSKING: And they have got quite a quantity; but through some mishap they pour it into the harbour and close the harbour up with sand.

Mr. FINLAY: Yes.

Mr. HOSKING: Then, as in the case of goods within this shipping company, you could seize the ship, and you could hold the company loading the ship responsible. Is that what you desire to do? Is that what this bill is for?

Mr. FINLAY: Excuse me; is this the amendment?

Mr. HOSKING: No, I am trying to understand clause 1 of the bill.

Mr. FINLAY: In that case, in the particular example which you cite, we would not be able to seize the vessel because the people who would be giving them sand would be nothing more than suppliers; they would not be the agents of the vessel and we would not be able to seize the vessel in that case.

Mr. HOSKING: And you would only be able to deal with the loader of the ship?

Mr. FINLAY: Yes.

Mr. WINCH: As far as I am concerned, I am coming to a clarification as a result of a question which was asked a few moments ago. Mr. Finlay, in answering, commented on the collection of damages by the Harbour Board in the past and mentioned that either recently or now you are taking action for the collection of damages, and that was done, but it was not the result of the vessel

itself. The fact that you are taking that action now to me is conclusive evidence that you have already got the right or power to move under a circumstance where it is not the vessel itself; and in view of the fact that you must have the power now, because you have taken an action, then why are you asking for the extra power to be given you here?

Mr. FINLAY: There is a misunderstanding. In answer to the question which was asked at that time, I was referring to the situation where at present we are suing a company which ordinarily acts as a ship's agent; but I had merely pointed out that in this case no vessel was involved because the company, at the time, was not acting as agent for any vessel. They set one of our sheds on fire, but the vessel had nothing to do with it. The company was not acting as agent for a vessel at that time. Therefore we simply sue the company.

Mr. BOUCHER: Would this party become the owner now?

Mr. FINLAY: No, because in the example which was cited, it had nothing to do with any vessel. The vessel in that case was a firm of ships agents, but they were not acting as agents of any vessel at the tme the damage was done. They set fire to one of our sheds and we claimed that they did it through negligence.

Mr. WINCH: Would you not have exactly the same power if they were acting as agents of the ship?

Mr. FINLAY: Yes, certainly; but in that case our suggestion is that if they had been acting as agent of the vessel at the time they set the fire, if that had been the situation, then we are suggesting that we should be given authority to seize the vessel.

Mr. GREEN: How do you reach that conclusion? The vessel did not have anything to do with the setting on fire of your shed. How do you reach the conclusion that because a man on the dock sets a fire, you should have the right to seize the vessel?

Mr. FINLAY: Because all it amounts to in the final analysis is that you may say that we are able to seize the vessel beforehand by way of security; but in any event, in the example cited, or in the second example cited, where these people had been acting as the agent of the vessel at the time they set the shed on fire, if that had been the case we could have sued the owners of the vessel actually and obtained a judgment against them and then seized their ship. Even though they have nothing whatever to do with it, nevertheless, they are still liable for the negligence of their agent.

Mr. WINCH: What I cannot get through my head is the case such as you have mentioned, where the ship or the actual ship owners had nothing to do with it; these people were acting for them at the time and they set fire to your shed; therefore you can go ahead and sue. But supposing they had been acting as agents, where is the moral or ethical chain of responsibility that because they did it as a company by their own act, that you should, therefore, hold the ship responsible?

Mr. FINLAY: I think that is merely fundamental.

Mr. WINCH: I am trying to understand it and I want to understand it, but I find it difficult.

Mr. FINLAY: It is a principle of the law of agency.

Mr. LANGLOIS (*Gaspe*): Quite independent of this Act.

Mr. FINLAY: Yes, quite independent of the Harbours Board Act; it is a fundamental principle of the common law respecting agency. Let us say that you drive your own car on your own business, and you do damage, let us say, through negligence. Only you can be held liable. On the other hand, suppose you are in the employment of X, and while in his employment you are still

driving your own car, and you do the same damage; in that case your employer is held legally responsible notwithstanding the fact that your employer had nothing whatever to do with the accident.

Mr. GREEN: But you are asking for the right to seize the ship before you prove in court that there was negligence?

Mr. FINLAY: Only by way of security, to force the vessel owner to put up security.

The ACTING CHAIRMAN: Shall clause 1 carry?

Mr. GREEN: No, it certainly is not carried. You are asking for the right to seize the ship in that case where there was a fire started by an agent on the dock before you have got judgment against the agent of the ship or against anybody else; is that right?

Mr. FINLAY: Certainly. As a matter of fact, if it were necessary to wait until we obtained judgment against the ship, then in many cases we would have no security whatsoever for obvious reasons, because the vessel might be 3,000 miles away and it might take months to get judgment.

Mr. GREEN: Why should you be put in that preferred position? Why should the National Harbours Board be put in that preferred position over the man who owns the dock next door to your dock?

Mr. LANGLOIS (*Gaspé*): I think—

Mr. GREEN: I would like to have an answer to my question.

Mr. FINLAY: The only answer I can give is simply the fact that we are here dealing with public property. There is nothing at all unusual about the principle of making a vessel liable for damage done. As a matter of fact, that principle will be found in the Canada Shipping Act and in every Act dealing with shipping in the United Kingdom and dealing with vessels. The principle is that the vessel is liable to seizure for damage done to harbour property.

Mr. GREEN: Damage done by the vessel?

Mr. FINLAY: Damage done by the vessel where the vessel is the physical instrument used.

Mr. GREEN: You have got that power now.

Mr. FINLAY: You say we have got that power now. But I understood that your immediate point was this: you suggested that there was an injustice in it.

Mr. GREEN: No, no, no. Suppose there is an agent, and he has a truck driver who tosses a cigarette into your shed and a fire starts; as I understand it, you are going to sue the agent for the negligence of his truck driver; but you are asking in addition that you be given the power to seize the vessel as security for any possible judgment that you might get for the damages caused by the truck driver's cigarette. Is that right?

Mr. LANGLOIS (*Gaspé*): Is your objection not met by the proposed amendment?

Mr. GREEN: I am asking the witness whether that is right or not.

Mr. FINLAY: In effect, it is; but as has been pointed out, I submit that there is nothing actually unjust about it. If anybody needs protection on the matter it is actually the party who is injured and it is always open to the vessel owner and to the agent to protect themselves by their own contractual arrangements. The Harbours Board or the port authority has no such protection whatever.

The ACTING CHAIRMAN: I would like to make an observation. We are not seeking to rush the committee, but the committee will not be able to sit again, at least until tomorrow evening unless we sit tonight. What is the wish of the committee?

Mr. GREEN: On that point, Mr. Chairman, the estimates of the Department of Transport are up all day tomorrow and I think it would not be appropriate to have a sitting of this committee while those estimates are under discussion in the House.

Mr. CONACHER: Could we not have a word of explanation in respect to the shipping federation to see if the amendment would not be agreeable to the people who are more interested in it than we are?

The ACTING CHAIRMAN: We could sit tonight.

Mr. HOSKING: Would it be possible to have an explanation from the party representing the shipping federation to see if the amendment would be agreeable to people more interested than we are?

The ACTING CHAIRMAN: The clock is striking six. What does the committee wish to do?

Mr. HOSKING: Could we sit a few minutes and see if we can finish this up?

Mr. GREEN: We will never finish this up within a few minutes because it is much too vital and important.

The ACTING CHAIRMAN: Does the committee wish to finish it tonight? What is the wish of the committee?

Mr. CONACHER: Let us sit for another half hour.

Mr. GREEN: This question is too vital to have it cleared up in a few minutes. I think we had better just adjourn until whatever is the best time to sit again.

The ACTING CHAIRMAN: Order, please. Mr. Brisset is from out of town and it is suggested that for his convenience we sit this evening.

Mr. NICHOLSON: I think it has been suggested we sit for another few minutes now.

Mr. CONACHER: It might clarify the whole matter.

Mr. BRISSET: I would like the committee to know that I will be at its disposal if you wish to sit tonight. With regard to the proposal, it meets part of the objection but not all of it and far from it. I would refer the committee to subclause (7) of clause 16 which says this:

> (7) Whether or not all or any of the rights of the Board under this section are exercised by the Board, the Board may, in any case described in subsection (1), proceed against the owner of the vessel in any court of competent jurisdiction for the amount owing to the Board (or for the balance thereof in the event of any sale contemplated by subsection (3)) and may also exercise against the owner of the vessel any other right or remedy available to the Board at law.

Therefore, even with the new amendment, assuming that the vessel does damage board property, the Canadian charterer and Canadian agent will always remain liable under this amendment and I will say this to the committee, that it will be the only maritime country in the world where an agent or charterer will become responsible for navigation of the vessel. I do not think you will find such a piece of legislation anywhere else. I am speaking, of course, of a charterer in its widest sense and not a demise charterer. I do not see the distinction which my learned confrere wants to make here. The word is clear in itself. "Charterer" is not defined as what we call a "demise charterer" and I do not think any court would interpret the word in the strict sense that has been suggested to us here today.

Mr. BELL: May I ask Mr. Brisset a question? Would you care to express an opinion concerning what effect the tightening of the liabilities for agents in Canada might have on shipping generally in Canada?

Mr. BRISSET: It would increase the potential liabilities of agents and charterers beyond what any charterer or agent in Canada could bear. I am speaking, of course, of possible cases where the damages would be extensive. If you have minor damages you are not too concerned, but you might have extensive damages and I know of claims amounting to thousands of dollars resulting from ships striking harbour installations. I repeat, the agent or the charterer cannot possibly be covered by insurance for such a liability. He will cover his liability for operations that are his. For instance, the charterer will at times undertake an obligation to load and discharge the vessel he has chartered. Therefore he will appoint stevedores or will use his own servants to load the chartered vessel. In doing so he may cause damage to property. For instance, a heavy locomotive being lifted into the hold might be dropped in the harbour and that would have to be lifted from the harbour and it would be an expensive job. The shipowner had nothing to do with this, it was done by the charterer.

Mr. LANGLOIS (*Gaspe*): Would Mr. Brisset be satisfied if we clarify the word "charterer" of a vessel by amending the clause to say "a charterer by demise". Would he then be satisfied?

Mr. BRISSET: I would have no objection to the word "charterer" being clarified to be charterer by demise.

Mr. LANGLOIS (*Gaspe*): Would that be satisfactory?

Mr. BRISSET: Yes, but that would still leave the agent, and I see no reason to make the agent responsible.

Mr. HOSKING: Could he be agent by demise?

Mr. BRISSET: No. I think it is quite clear from the representation we have today that when they refer to agent—I think Mr. Finlay used the word quite often—he means a servant; an agent in the ordinary sense is not a servant. If the agent is a servant or if the damage is done by a servant the law of respondiat superior should apply; it is a common law that the employer should be responsible.

Mr. NICHOLSON: Is Montreal Shipping an agent at Churchill?

Mr. BRISSET: Yes, they have offices in various ports like Montreal, Quebec, Halifax and Churchill. They handle hundreds of ships a year foreign owned as well as Canadian owned. They have no connection at all with the operation of these vessels. When I speak of operation I speak of navigation and the choice of crews.

Mr. NICHOLSON: Montreal Shipping handled about 30 ships into Churchill last year, quite a number of them Italian and Greek, the crews of which speak a foreign language, and perform a very useful service in clearing these ships through Churchill. It seems to me to make them responsible for mistakes in navigation would be a very large burden to put on them.

Mr. WINCH: Is it possible for the present witness to appear before the committee sometime next week if the members have questions?

Mr. BRISSET: Certainly. I will be at the disposal of the committee.

The ACTING CHAIRMAN: When does the committee wish to meet again?

Mr. WINCH: Adjourn at the call of the chairman.

The ACTING CHAIRMAN: Will someone move we adjourn.

Mr. WINCH: I move that the committee adjourn.

EVIDENCE

May 31, 1954
2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. It has been customary to print so many copies in English and French of the evidence. Would somebody like to move the number of copies to be printed?

Mr. LANGLOIS (*Gaspe*): I move that 500 copies in English and 200 copies in French be printed.

Mr. GREEN: I second that.

The CHAIRMAN: Is it agreed?

Carried.

Gentlemen, when we adjourned at the last meeting we were still considering clause 1 of Bill 421. Shall the clause carry?

Mr. WINCH: I understood that there was going to be an amendment.

The CHAIRMAN: On clause 8.

Mr. WINCH: On clause 1 there was to be an amendment, which I understood the parliamentary assistant was going to accept, that is, in subsection (*ea*) after the word "charterer", on the second line, that the words "by demise" be added.

Mr. LANGLOIS (*Gaspe*): That "charterer by demise" be substituted for "charterer".

Mr. WINCH: I would so move.

Mr. GREEN: I think that perhaps we might make better progress if we left some of these sections which are contentious stand and dealt with the others. Over the week-end I have had an opportunity to go over the brief submitted by Mr. Brisset, and I do not know how many other members have done so, but I think it makes the situation clear beyond the shadow of a doubt with regard to this proposed extension of power to seize a vessel.

Coming from one of the great ports of Canada, I cannot overemphasize the concern with which we see an attempt being made here to extend the power of the National Harbours Board to seize vessels. That right of actually seizing a vessel is going very far. They already have the right to seize for damage that is done to a dock by the vessel, but they are attempting in these amendments to get the power to seize a vessel for damage done by an agent living in Vancouver or any other port or by a charterer, in addition to a charterer by demise. I do not believe that there could be a more objectionable provision going into this Act.

You have ships coming in from all countries of the world. A government agency will have an arbitrary power to seize a vessel, not for something the vessel itself does or that its master does, which right they already have, but they go further and ask for the right to seize for things done by a local agent. I think it is preposterous. You will notice that this submission is made on behalf of the Shipping Federation of Canada and also on behalf of the Vancouver Chamber of Shipping. I cannot see why the National Harbours Board would ask for such a power.

The CHAIRMAN: What clause is that under?

Mr. GREEN: Clause 1 is the chief clause. Particularly when it was admitted last week that they had not lost one cent for damage done by a vessel, why on earth should there be any necessity to give them wider powers which can only interfere with the shipping business coming into the port.

You will have the same proposition when you get the St. Lawrence waterway opened up. You do not want to have in Fort William or the port of Toronto and all these other ports, which are not national harbours but which are important ports, any laws that will interfere unnecessarily with the shipping in and out of those ports.

This whole principle is contrary to marine law. The National Harbours Board has the right now under marine law to sue a vessel and have it seized by the sheriff, and in addition they have the right to seize it under their own Act for anything done by the vessel. That is the law of all the maritime nations at the present time, certainly of the British nations. I do not see why the National Harbours Board should be entitled to have any wider rights. Mr. Brisset summed it up in the last two paragraphs of his brief. After outlining the reasons in this brief, which I think cannot be answered and certainly were not answered by the National Harbours Board, he ended with these paragraphs:

> For all the reasons which we have outlined above, we therefore respectfully submit to you that the definition of the word "Owner" under the amendment in section 1 subsection 1(e)(ea) should be deleted and that section 8 purporting to repeal section 16 of the present Act and to substitute it by the new section 16 should also be deleted, except perhaps that the words "the crew while acting as the crew" could be advantageously replaced by the words "a member of the crew thereof acting in the course of his employment" and the reference to charterer and agent at the end of subsection 2 of section 16 in the present Act could be deleted, and replaced by the words "charterer by demise".
>
> We repeat that during the 18 years the Act has been in force the wording of section 16 of the present Act has never been found to be lacking and that the board has always been able to obtain satisfaction for damage done to its property whenever it was entitled to do so under the common rules of justice and equity.

I would hope that the minister would have another look at that section. I think that in the meantime it should be allowed to stand and that we should deal with the sections which are not contentious. This goes so far in the way of interfering with the rights of the shipping people existing at the present time that I think it is very unfair in addition to being unnecessary.

The definition of owner also contains the definition of the owner of the goods, and I would like to have a further explanation of that by somebody on behalf of the National Harbours Board, because it seems to me to be just as objectionable as the definition of owner of the vessel. It includes the bailee and the carrier. That is a person who happens to be transporting the goods to and from the dock, and I think again it is taking much too wide powers. We did not deal with the question of owner of goods the other day. We dealt with the question of the owner of a vessel. I would hope that that section could be allowed to stand until we have a further look at it.

Mr. LANGLOIS (*Gaspe*): Mr. Chairman, I want to make it clear at this time that whatever I say now or later is subject to approval by the committee, and I do not want to give any directive whatsoever. Mr. Chairman, I think it should be first pointed out that the Shipping Federation of Canada has made representations to the National Harbours Board; these were made for the first time in a letter dated April 19. Following these representations the legal advisers for the federation were invited to come up to Ottawa and discuss their points with officials of the National Harbours Board, and they did that.

Quite a comprehensive discussion took place, and the wording of both clause 1 and clause 8, in so far as they had something to do with these representations, was carefully considered by the Board. The Shipping Federation make three points. Firstly, they claim that by introducing this definition of owner into the National Harbours Board Act we would change the purport of section 16, as amended by clause 8 of this Act, so that the owner of a vessel might be held responsible for damages caused by his agent even when the ship is miles away from Canada and the owner has nothing to do whatsoever with the action which resulted into the damage being caused to the board's property. That is one of the points they made. Following these discussions with the officials of the board and specially with counsel for the board, it was suggested that an amendment might be considered to clause 8 of the bill by which the owner of the vessel could be protected and the vessel made subject to seizure only when the act resulting in damages is caused by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer; and also a second amendment to section (c) of the proposed clause 8, reading: "That obstruction to the performance of any duty or function of the board or its officers or employees has been made or offered by the vessel through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been sustained by the board." That leaves the damages caused by the agent out, and the vessel cannot be seized for damages caused by the fault or negligence of the agent. I think that clears that point, and that meets it fully. I think that Mr. Brisset the other day agreed to that.

Mr. GREEN: I did not understand that.

Mr. LANGLOIS (*Gaspe*): If I am allowed to ask a question of Mr. Brisset, I would ask him if he is satisfied.

Mr. BRISSET: I agree that for this point it has been met.

Mr. LANGLOIS (*Gaspé*): For this point, yes.

Mr. BRISSET: Perhaps later on I may be allowed to make a few remarks.

Mr. LANGLOIS (*Gaspé*): Yes. This is why I respectfully submit that the changes could be made much better under clause 8, and any member of the committee could at the appropriate time move such amendments if he wishes to do so.

Now, the other point made by the Federation was that on the other hand the agent was going to be made liable for damages resulting from the actual operation of the ship, over which he has no control. Let us say, for example, the agent might be responsible for the faulty manoeuvre of the ship, which results in damages to one of the National Harbours Board's piers or jetties. I wish to say there that the agent has been responsible for damages caused to such property as public wharves, etc.—long before the board ever existed. For example, way back in 1913 the Vancouver Harbour Commissioners Act, Chapter 54, S.C. 1913, section 29(2), had the following disposition:

> In a case within paragraphs (c) or (d) of subsection 1 of this section the vessel may be seized and detained until the injury so done has been repaired by the master or crew or by other persons interested, and until all damages thereby directly or indirectly caused to the corporation, (including the expense of following, searching for, discovering and seizing such vessel) have been paid to the corporation; and for the amount of all such injury, damages, expenses and costs, the corporation shall have a preferential lien upon the vessel and upon the proceeds thereof until security has been given to pay the amount of such damages, whether direct or indirect, and of such injury and costs as may be awarded in any suit resulting therefrom, and the owner, charterer, master or agent of such vessel shall also be liable to the corporation for all such injury and damages.

This was repeated in other harbours legislation, for example in the Saint John Harbour Commissioners Act, Chapter 70, S.C. 1919; section 22(2).

The same thing was repeated in the Chicoutimi Harbour Commissioners Act, 1926, Chapter 6, S.C. 1926; section 17(2).

The same thing was repeated also, verbatim, in the Halifax Harbour Commissioners Act, 1927, Chapter 58, S.C. 1926-27; section 22(2).

Mr. GREEN: May I ask a question? That provision is in the National Harbours Board Act?

Mr. LANGLOIS (*Gaspé*): Section 16, yes.

Mr. GREEN: But the point is that you are changing that so that the vessel is to be made responsible and can be seized for damage caused by the agent, which has nothing whatever to do with the vessel.

Mr. LANGLOIS (*Gaspé*): This has been disposed of by the first suggestion that I made and by the amendment I explained before I came to this second point. Mr. Brisset agreed that the owner would be satisfied because his ship could not be seized if that amendment was passed.

Mr. GREEN: You mean the amendment you showed to us the other day?

Mr. LANGLOIS (*Gaspé*): Yes, the one I read a while ago.

Mr. GREEN: The amendment you showed to us the other day does not apply (*d*) of the new subsection which reads:

> (*d*) the owner of the vessel has committed an offence under this Act or the by-laws, punishable upon summary conviction by a penalty payable under section 21 to the board;

So that if the agent commits an offence under the by-laws or under the Act, then you can still seize the vessel. You have taken the word "owner" out of (*b*) and (*c*) but you have not taken it out of (*d*).

Mr. LANGLOIS (*Gaspé*): Counsel for the board reminds me that (*d*) is for an offence under the Act which cannot amount to more than $500; that would be the maximum.

Mr. GREEN: But you have the right to sue.

Mr. LANGLOIS (*Gaspé*): For a violation of the Act; that is not for damages; is it (*d*) you are referring to?

Mr. GREEN: The power you are asking reads as follows:

> 16(1) the board may, as provided in section 18, seize any vessel within the territorial waters of Canada in any case, where, in the opinion of the Board . . . .
>
> (*d*) the owner of the vessel has committed an offence under this Act or the by-laws, punishable upon summary conviction by a penalty payable under section 21 to the Board;

In other words, it is not the court which decides whether the Harbour Board has the power to seize; all that is done is that the board itself shall decide whether it has the right to seize. Moreover, (*d*) includes the word "owner".

Mr. LANGLOIS (*Gaspé*): (*d*) is for an offence under this Act or a by-law.

Mr. GREEN: You say that under (*d*) the Harbour Board can seize if the owner of the vessel has committed an offence under this Act or by-laws; and on the next page you confirm the right to detain the vessel by subsection 2 of the new section 16, which says:

> In any case described in paragraph a, b, c or d of subsection 1, the board may detain any vessel seized pursuant to subsection 1 until the amount owing to the board has been received by it, or, if liability is denied, until security satisfactory to the board has been deposited with it.

By leaving the word "owner" in (*d*), you have got the ship made liable for any breach of the by-laws or the Act by the agent.

Mr. LANGLOIS (*Gaspé*): The owner—and I think that you would agree with me, Mr. Green—the owner of the ship cannot be held responsible for an act done by his agent unless it is proven that the agent was acting within the exercise of his mandate as agent for that ship when the act was committed.

Mr. GREEN: It does not say that.

Mr. LANGLOIS (*Gaspé*): But that is the common law; that is so under agency law.

Mr. GREEN: Your definition of "owner" in section 1 is so wide that it covers the agent and the charterer. My submission is that you do not need any such definition at all, because the Act gives you ample powers as it is and it covers these other people for whose actions the ship can be seized.

Mr. LANGLOIS (*Gaspé*): That is why we are saying that the bill does not do anything to enlarge the provisions of the Act so far as the responsibility of the agent or that of the owner or the charterer of the vessel are concerned. That is why I quoted these provisions in the former Acts dealing with the Harbour Commissions of Halifax, Chicoutimi, Vancouver, and so on; they show that these provisions were in existence back in 1913 and were repeated in 1936 in the "National Harbour Boards Act." All we are doing now is to repeat the same thing. We are not adding any extra power, and I think that counsel for the board will vouch for that statement as well.

Mr. GREEN: Counsel for the board admitted the other day that in this amendment you are now taking the power to seize these vessels for actions by their agents, a power which you did not have before; and you are doing it because you are making the word "owner"—your definition of "owner" cover agent. The powers which you quoted from the Vancouver Harbour Commission Act and the other similar Acts are merely powers to sue the agent or to sue the charterer for any money which you do not realize by seizing the ship.

Now, nobody seriously questions that right. The trouble is with your amendment which would give further power to the board to seize the vessel for damage done by an agent. Mr. Finlay said the other day that if the agent has a truck on the dock and the truckdriver threw out a cigarette which set fire to the dock, then under this amendment the vessel can be seized because the word "owner" is defined very broadly to include agent. I think that is contrary to all marine law and contrary to everything that is fair and reasonable. The board has no right to get such drastic powers of seizure for actions done by an agent.

It is all right for them to seize for anything that the vessel does; for example, if the vessel runs into the dock and injuries it, then the vessel should be subject to seizure as under marine law; but this business of making the vessel liable for the agent's actions, I think is going much too far and the trouble really begins in the definition of the word "owner"; if you take the word "agent" out of the definition of owner and qualify "charterer" by restricting it to "charter by demise", then I think you will get away from a good deal of the trouble.

Mr. LANGLOIS (*Gaspé*): Mr. Chairman, I think that Mr. Green will agree that the objection to the right to seize a vessel for any act of the agent is met by the suggested amendment. Now I say that this amendment does not cover subsection (1) of the new section 16 dealing with fines which might be imposed against the agent or owner for non-observance of the sections of the Act or the by-laws. We have been told that it might amount to a maximum of $500. However, I am also told by the officials of the board that there would be no serious objection, if the committee feels that it should be done in that way, to an amendment to section (*d*) to make it even clearer that the owner is not responsible for violations of by-laws of the board or of provisions of the Act by the agent. So I would think that by accepting these two amendments, we are fully covering the points made by Mr. Brisset and by Mr. Green.

Mr. GREEN: Would you take out subsection (*d*) of section 16?

Mr. LANGLOIS (*Gaspé*): It is being suggested that we might add after, "the owner of the vessel as" the words "in respect of the vessel" and that would limit it to violations in respect to the vessel itself.

Mr. GREEN: As long as you make the word "owner" include "agent" then you are wrong in my judgment. The word "owner" should not include "agent" at all. If you want to make the agent liable under a section of this Act, then put the word "agent" in; but do not define owner with a blanket definition which includes agents and charterers. That is where the amendment goes wrong because you are trying to cover everybody by the word "owner". I do not think it is good business to do that and I would like to hear Mr. Brisset on that point.

Mr. CAVERS: Mr. Chairman, I was not here on Wednesday last and I did not have the benefit of hearing the submission made by Mr. Brisset; but from the discussion so far, it seems to me that even in Mr. Green's submission there are only two things with which he takes any disagreement; first, with regard to the matter of the charterer, and apparently that has now been settled and satisfactorily agreed upon by the amendment of Mr. Winch. In regard to the second point, the question of the word "agent", that is the situation where it stands at the moment and I think that the committee might be confused as to whom "agent" might be.

To my mind an agent, in this situation, refers not to any carter or any person who might come upon the jetty or the wharf; but an agent is the one who has been called upon by authority of the owner, and to whom has been delegated authority to act by the owner himself.

(The Committee adjourned for a vote in the House).

(on resuming)

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. CAVERS: Mr. Chairman, as I was stating before the recess on the question of interpretation of the word "agent", as I see it the agent is some person who has been invested with authority by the owner to act for him in that particular jurisdiction in which the harbour might be situated. That being so, he is the owner in that particular area. He is given authority to carry out acts for the owner there and he deals with the port authorities and with all the persons in charge of the port. He is, in effect, the owner in that particular jurisdiction or harbour. It is the agent who knows with whom he is dealing. The agent in the port has probably had a long dealing with the owner for whom he acts and if he does not know the owner for whom he is acting, then it seems to me that he can protect himself by requiring the owner to give him a bond covering any loss that he might be put to under the Act. It seems to me, therefore, there are only two points to consider, one which seems to have been settled by reason of the amendment and the other question as to the word "agent" on which there might be some difference of opinion, and if we could deal with the clause it would seem there would be little more that could be discussed in the committee.

Mr. LANGLOIS (*Gaspé*): I was not finished. I was talking about the two first points made and now I would like to discuss the third point. However, before I come to that third point, may I make the following remarks concerning subsection (*d*) of section 16 (1) and the objections raised by Mr. Green. During this short recess we just had, for the division, I discussed this further with counsel for the board and he directed my attention to the fact that in subsection (*d*) we are dealing exclusively with penal law and surely the word "owner" cannot be interpreted as meaning agent or vice versa. When we are dealing with criminal or penal law, the owner can in no way be held responsible

for an offence committed by his agent. I think Mr. Green will agree with me on this point. Furthermore, if you look at subsection (*e*) of clause 16 (1) you will see that it reads:

> Judgment against the vessel or the owner thereof has been obtained in any case described in paragraph (*a*), (*b*) or (*c*);

—and it stops there—it does not add (*e*) because we cannot obtain a judgment against the owner of the vessel for a penal offence or violation committed by the agent. Although there seemed to be no objection to adding, as I suggested earlier, after the word "has" in (*d*)—the first line—"in respect of the vessel", I am of the opinion it would not be necessary to do that even, because I think it is clear that the owner cannot be held responsible for a penal offence committed by an agent, and the word "owner" in this subsection (*d*) must be interpreted in regard to the context and that deals with penalties.

Mr. GREEN: This shows very clearly that my argument was right about this business of defining an owner to include agent. The parliamentary assistant is now arguing that where the word "owner" is used in this subclause (*d*) of clause 16 it only means the actual owner and does not mean the agent. That is what he is arguing—

Mr. LANGLOIS (*Gaspé*): No. An act committed by the agent—

Mr. GREEN: —because it is a penal section it does not include the word "agent." If he is right, where you find the word in that particular subclause it does not mean "agent" but where you find it in the other clauses and subclauses it means or includes agent. That just shows you how ridiculous that argument is. The owner is defined in the new subclause 1 as including the word "agent" and therefore everywhere "owner" appears throughout the bill it includes agent. I have never heard the law the parliamentary assistant is suggesting now, that because it is a penal section it does not include the word "agent", although the definition clause says it does; the way to get around this is to cut out the business of trying to make the word "owner" mean something else. Let us use the word "owner" as meaning the man who owns the ship, and let us not try to have it cover two or three other people who are no more the owners of the ship than you and I are, Mr. Chairman. I think that is where the draftsman of this particular statute has gone wrong.

Mr. LANGLOIS (*Gaspé*): I do not know if it is because I did not make myself clear, but I never said the owner did not include the agent under subclause (*d*). All I said is that, since we are dealing with penal law, the owner of the vessel could not be held responsible for a violation committed by the agent and vice versa. The agent for a violation by the charterer or the owner, because the person who commits the offence or violation can be prosecuted before a court. We cannot hold the agent responsible for a violation by the owner, and I think it would be hard to prove the contrary.

Mr. GREEN: Could I ask the parliamentary assistant a question? Does he contend that the vessel cannot be seized where, under subclause (*d*), the agent has committed some breach of the Act or the regulations?

Mr. LANGLOIS (*Gaspé*): Quite right.

Mr. GREEN: Quite right? That is, the agent breaks the rules under this Act and then the vessel can be seized for his having broken the rules?

Mr. LANGLOIS (*Gaspe*): It can not be seized.

Mr. GREEN: But clause 6 says: "The board may, as provided in clause 18, seize any vessel within the territorial waters of Canada." Subclauses (*a*), (*b*) and (*c*) are mentioned and then we come down to subclause (*d*) where it says the owner of the vessel has committed an offence under this Act and so on, and the owner is defined as including the agent. That means the vessel can be seized for any breach of the regulations by the agent?

Mr. LANGLOIS (*Gaspé*): That is not right. You see, we cannot seize the vessel for an offence committed by the agent but, if the offence is committed by the owner we will be able to prosecute him and also seize the vessel. That is, the party who committed the offence. You know that from your knowledge of law. By looking at the definition of owner in clause 1 you can see that owner includes owner, charterer or agent. My point is that, since we are dealing with penal law, we can only pin the offence on either the charterer, the person who actually committed the offence, the agent or the owner of the vessel as the case may be. Is that clear? I am trying to make it as clear as I can.

Mr. GREEN: What you are saying is clear, but it is completely wrong in my judgment.

Mr. WINCH: Mr. Chairman, I most certainly want to get a clear understanding of this in my mind. I had some doubt about it when the committee last met, and I will quite honestly admit that I am becoming more and more confused and am finding it more and more complicated. I do not know whether it is because we have two lawyers trying to explain two sides of the same word or not—

Mr. HABEL: There is something in that!

Mr. WINCH: —but in an endeavour to clear this up, may I ask the parliamentary assistant if I am correct or wrong in my understanding. As I see the key of having the word "agent" in now, under the interpretation of owner, strikes me—or, I will put it as a question. Does this mean that if there is a company outside of Canada, let us say in country "X", which is incorporated and is a company which perhaps does not have any physical assets and it charters a boat or boats—I will say a boat—of a company that is in country "Y" and this boat comes to Canada and does damage to any of the installations or property of the Harbour Board and before it can be seized, or for other reasons, it gets outside the territorial waters of Canada and there is a claim by the Harbour Board then against that ship, that you cannot collect because the company is outside of Canada and may not have any physical assets in any way? You cannot touch the ship itself, or the owners of the ship, because that is country "Y" and you cannot touch the actual ship itself unless it happens to land again in Canada. In other words, if they keep that ship out of Canada, you would have no way of collecting either from the charterer, from the owner, or by seizure of the ship itself and therefore—and this is the point I am coming to—is it because of a situation like that that you are asking for the power of putting in the agent as an owner so that you can lay a charge against the agent, and if that is correct, are you saying you have not had that power in the past?

Mr. LANGLOIS (*Gaspe*): We have had it all the time.

Mr. WINCH: If you have had it all the time why do you need this change now? That is the point I cannot get clear.

Mr. LANGLOIS (*Gaspe*): We are not changing anything. It is just a re-wording, and if you look again at the explanatory note you will see the prime purpose of clause 1 in which we put a definition on the word "owner":

> The prime purpose is to enable the Board charges made under other provisions of the Act (see clause 6(2)) to be imposed directly upon carriers and bailees of goods as contrasted with the actual owners thereof; in many instances the carriers or the bailees are the only persons with whom the Board has any direct dealings. An ancillary purpose is to eliminate the necessity for use, elsewhere in the Act, of cumbersome phrases such as "agents, owners, masters or consignees, etc." of goods or vessels.

Another purpose or secondary purpose is to avoid the use of repeating phrases over and over again throughout the Act, where we have to repeat "owner, charterer, agent, master of the vessel, etc." You see from the note that the primary purpose is not to add anything to the Act, nor to enlarge the powers of the board as they exist under the present Act. That is why we claim that this adds nothing to the Act. It is merely a new definition to avoid repetitions further on in the Act and it is far from our mind to increase the power of the board in that direction. Does that answer your point, Mr. Winch?

Mr. McIvor: Carried.

Mr. Bell: I am inclined to agree with Mr. Green and the main difficulty is that we have taken the word "owner" to loosely mean the owner of a vessel. We have taken it and have given it this particular meaning in the interpretation section now and I suggest we will have to go all through the Act and examine the word "owner" as it was used before and see what the ramifications will be with the new definition and whether it increases the powers—which of course has been admitted today and was admitted the other day—there was an increase in the powers given by this definition of the word "owner". I suggest that instead of making all these amendments, Mr. Chairman, it might be better to take the clauses in which you feel the word "owner" is weak and does not give you sufficient powers and spell out in those sections any addition to the word "owner"—ships' agents and charterers, etcetera. Otherwise, we will have to change and argue each section of the old Act and examine its present meaning and it will take us days to do that because the word "owner" is used, for example in section 18, I happen to note, and in other sections. It will have to be examined in the new light, and therefore I suggest that the sections that are bothering you are the ones about seizure, and if there are other ones that you feel the word "owner" alone does not give you enough powers under, let us know what those are and we can spell them out.

Mr. Langlois (*Gaspé*): What Mr. Bell is suggesting now is what we have been trying to avoid, those numerous repetitions of owner, agent and so on in other sections of the Act, and that is why we have to define "owner". Counsel for the board and the lawyers of the Department of Justice have been very careful in drafting the wording of the new section 16, since we were defining "owner" and this has been, as I said before, argued at quite some length with the representatives of the Shipping Federation when they came up to Ottawa some time ago. Let me illustrate a point by giving you an example. Some years ago a ship on her departure from the port of Vancouver crashed through one of our jetties going out of the harbour doing over $\$\frac{1}{2}$ million damage to our property, miraculously with little or no damage to the ship. The ship, however, remained in harbour and the amount of the damage involved was settled, but had that ship sailed—she was able to sail, she had very little damage—had she been a foreign ship then we would have welcomed our recourse against the agent. That is why we do not want to do away with that particular power that we have now under the existing Act to get after the agent, when the ship has sailed and the shipowners have no physical assets in Canada on which we might make good a judgment in court.

Mr. Green: A ship cannot creep out of a harbour like a thief creeping out in the night. If your local harbour officials are on the job no ship can get away; she has to be cleared. It just could not happen that a ship could get out like that. The Board admitted the other day that they have not lost one cent in the eighteen years they have been in existence by reason of damage caused by a vessel to your docks, so needing this power to prevent loss does not carry very far.

Mr. Langlois (*Gaspe*): Let me give an example to Mr. Green to illustrate why I do not agree with him, when he says if the employees of the board are

on their toes they should see all those damages because a ship to obtain clearance. Take the case of the ship that clears through customs and gets also its clearance from the port authorities at six o'clock p.m. just before the office is closed. She is due to sail at midnight and clears at six o'clock. She sails, for example, from a berth near the Victoria basin in Montreal, which is the western section of the harbour in Montreal. The board's properties extend some 30 miles. That ship sails and half an hour later, when some eight miles down, she passes too close to a jetty and causes extensive damage to the jetty, but she is not damaged too much and can carry on and proceed to sea. The next day somebody will discover that jetty has been damaged and before this damage is linked to the ship, an investigation must be carried out when we are in a position to determine that such a ship has caused the damage she then might be quite a way out and outside the territorial waters of Canada. It is exactly cases like that that we want to cover. I must add the fact that we have had no bad experience in 18 years does not mean that we might not have a case where the board might lose a lot of money in the future. We have been lucky so far that the accidents were caused by responsible Canadian shipping companies or foreign shipowners that were not trying to evade their responsibility. But, just the same, in one case given the other day, the board had to incur quite heavy legal expenses in order to recover its losses. I think that with the development of our inland navigation network through the deepening and widening of the St. Lawrence seaway, that Canada may expect more foreign ships visiting our ports in the future and it may be a good thing not to deprive the board of the power it already has under the Act to sue the agent, when the owner of the vessel does not want to submit to Canadian courts. That is the party we are protecting the board against; the owner who is a foreigner and does not want to submit to Canadian courts. In that case we are able to go after the agent. Someone said the board might lose some business. If we lose that kind of business, that of owners who are trying to evade the responsibility in those cases, then we do not want that kind of business.

Mr. DECORE: This would apply to foreign vessels?

Mr. LANGLOIS (*Gaspe*): Yes.

Mr. DECORE: I think Mr. Winch's point was well taken with reference to foreign ships.

Mr. NICHOLSON: Mr. Chairman—

The CHAIRMAN: Mr. Decore had the floor.

Mr. DECORE: I just wish to bring out one point. I thought Mr. Winch brought out a matter that while you said that Act gives enough protection as it is right now, it is a matter of giving a clearer definition.

Mr. LANGLOIS (*Gaspe*): Yes. We are not changing a thing as far as the agent is concerned.

Mr. DECORE: And you are trying to get protection from foreign ships who may go out of territorial waters of Canada—the right to protect our property here in Canada to prevent those ships from going out of Canada.

Mr. LANGLOIS (*Gaspe*): We want whenever possible to be able to seize the ship before it sails.

Mr. DECORE: Do we have that power now?

Mr. LANGLOIS (*Gaspe*): Yes. We want no new power. We want the ship to put up the security and if the ship is gone, we want to be able to go against the agent, and we have been able to do so under the existing legislation.

Mr. GREEN: The parliamentary assistant has got this mixed up. The board has the power now to seize any ship, Canadian or foreign, for any damage

done to harbour board property by the vessel or by a crew acting as crew of the vessel. They have that power right now.

Mr HARRISON: Providing they can find the ship.

Mr. GREEN: They admit that they have not lost a cent yet. It is not so easy for the ship to get out of the port. As a matter of fact, the ships are covered by insurance for complaints of this kind anyway, so there is very little prospect of the board losing that money. They have that right now and in addition have the right to sue in the Admiralty court and the minute they sue they can get a libel which is pasted on the ship and the ship is stuck in harbour under those conditions.

Mr. DECORE: Suppose it is a foreign ship and it takes some time before we obtain judgment for damage and in the meantime this foreign ship is 200 miles away, what happens then?

Mr. GREEN: They have the power now to seize a foreign ship.

Mr. DECORE: Atfer you get judgment.

Mr. LANGLOIS (*Gaspé*): And before too. I am sorry, I have been told that by mistake I might have inferred that this power to seize the vessel before judgment is new. It is not new.

Mr. GREEN: They have the power under the present Act to seize the vessel the minute it smashes a dock.

Mr. DECORE: Foreign vessels?

Mr. GREEN: Any vessel, Canadian or foreign; they also have the right to sue; and the minute they sue they get a libel issued and the ship is stuck in port until it puts up a bond to cover the damage. They have those rights now, and in addition they are asking here for the right to seize that vessel for damage done to the docks by an agent. For example if the agent's truck smashes into the dock and does damage which has no connection with the vessel at all they want the right to seize the vessel for the damage done to the dock by the agent; this right of seizure of a ship is a mighty drastic right. It is about the most drastic right there is in Canadian law, and we do not believe they should have any right to seize those vessels except for things done by the vessels themselves. The trouble is they define an owner as including agent and in that way bring the ship in as security for any damages done by the agent.

Mr. Cavers referred to the agent as being the agent for all purposes of the vessel and being the agent of the owner. That is not the case at all. Mr. Brisset dealt the other day with the status of these shipping agents.

Mr. CAVERS: The agent is the man they deal with.

Mr. GREEN: You are trying under the law to make the agent responsible as well, and in the brief Mr. Brisset said what these agents are. He said: "It is interesting to note as regards the agent, for instance, that the words used are not 'the agent of the owner' but 'the agent of the vessel'; therefore it is quite clear that reference is had to what is known in common parlance as 'vessels' agents' or as 'husbanding agents'. 'Vessels' agents' or 'husbanding agents' are not in any sense of the word the representatives of the owners of the vessel."

Mr. LANGLOIS (*Gaspé*): We will never obtain a judgment under those circumstances.

Mr. Green:

They are simply co-ordinators of services and will, for a modest fee, provide certain services to vessels coming into a port to load and discharge cargo. He said it would run perhaps as high as $200. They will

act as agents do liaison between the master of the vessel and the stevedores who will load and discharge the vessel, the ship-chandlers who will replenish her stores, the coal or oil merchant who will fill her bunkers, the shipping master who will sign off or sign on her crew, the customs officer who will grant a certificate of clearance, the tug owner who will provide towing services in and out of berth, the pilotage authority who will provide the pilot to take the vessel out to sea.

Vessels' agents in this manner will handle scores of vessels during a year, and in the performance of the services which they render their servants will of course have occasion to utilize board facilities. If, in the course of the performance of their job, they cause injury to board property we submit that there is no reason to make the vessel for which they may be acting as agent at the time liable to seizure for the damages they have caused.

Yet this bill gives the power for the board to do just that.

Mr. LANGLOIS (*Gaspé*): With respect to Mr. Green's last remark I think this has been said over and over again. I will ask him again to look at section 16, subsection (2) of the National Harbours Board Act as it exists now and I will even read it for the benefit of this committee. It goes:—

In a case coming within paragraphs (*c*) or (*d*) of subsection (1), the vessel may be seized and detained until the injury so done has been repaired and until all damages thereby directly or indirectly caused to the board (including the expense of following, searching for, discovery and seizing of such vessel), have been paid to or security for such payment accepted by the board; and for the amount of all such injury, damages, expenses and costs, the board has a preferential lien upon the vessel and upon the proceeds thereof until payment has been made or adequate security has been given for such damages, whether direct or indirect, and for the amount of all such injury, damages, expenses and costs as may be awarded in any suit resulting therefrom, and the owner, charterer, master or agent of such vessel is also liable to the board for all such injury, damages, expenses and costs.

It follows the exact wording as in the definition of owner in clause 1 as it now stands. I repeat: "The charterer or agent of such vessel shall also be liable to the board for all such injury, damages, expenses and costs". I think it is clearly indicated that we are not handing over one parcel of power to the board. We are merely repeating what exists now and what has been in existence, as I explained in the earlier stages of this meeting, since 1913 in Canada, and was repeated in many harbour statutes since that year. We are not handing anything to the board. I think, Mr. Green, in the face of this subsection, you must agree with me that we have the exact wording, and I repeat it:

and for the amount of all such injury, damages, expenses and costs as may be awarded in any suit resulting therefrom, and the owner, charterer, master or agent of such vessel is also liable to the board for all such injury, damages, expenses and costs.

If that does not make the agent liable now under the Act as it exists, I do not know what would make him liable.

Mr. GREEN: That allows the board to sue for any deficiencies after seizing the vessel. At the moment I am not quarrelling with that. But the bill, as you are bringing it in now, gives you power in the opposite direction. In other words, it enables you to seize the vessel for injuries done by the agent, and that is what we say is unfair, that the acts of the agent should not result in the ship being seized. There is not that power in the Act, and in the way you have drawn the bill there will be that power for the board to seize the vessel for action done.

Mr. LANGLOIS (*Gaspé*): May I suggest, Mr. Chairman, that the counsel of the board try to explain this again.

Mr. GREEN: I wonder if we can hear from Mr. Brisset, who is representing the people who will be hurt.

Mr. CAVERS: He has already appeared as a witness.

Mr. DECORE: Supposing that the actions of the agent are such that they contributed directly or indirectly to the damage, why should the agent not be liable?

Mr. GREEN: He should. I am not quarrelling about the agent being liable for his own actions for the moment, but I am quarrelling with the fact that the vessel can be seized for the agent's actions. If the agent is negligent on the dock, the vessel can be seized.

Mr. DUMAS: He is representing the owner.

Mr. GREEN: The agent is not responsible for the ship doing damage to the dock.

Mr. DECORE: He is acting as agent for the ship, a foreign ship. If that agent has been negligent in something, why should not the company be responsible?

Mr. CAVERS: Certainly they should.

Mr. GREEN: It is a fundamental law of this country, this right against a ship. You are from the prairies and do not know the shipping law. It is a right against a ship for damages done by a ship. When the law goes further and gives anybody the right to seize a ship for things done by somebody else, that is an entirely new departure in Canadian law.

Mr. DECORE: I admit that I come from the prairies and do not know much about shipping, but this is a matter of common sense, whether it is in shipping or anything else. If an agent has done a certain thing acting for the ship owner, the ship owner should be responsible for the actions.

Mr. GREEN: If the board could get a judgment against a ship owner for an action done by the agent, that is all right, but that is not the question. We are questioning the right to seize a ship before the harbours board has even gone to court. They are given here the right to seize that vessel without even commencing any action.

Mr. LANGLOIS (*Gaspé*): May I add this? I suggest that we are now turning around in circles. In this exchange between Mr. Green and Mr. Decore we are coming back to the point that has already been met. Mr. Brisset has admitted that it has already been met by one of the proposed amendments. If this amendment is accepted by the committee, in such a case as the one Mr. Green gives us, the ship would not be seizable under the amended act for something done by the agent, because in the new (*b*) and (*c*) we are going to eliminate that objection, and I thnk that Mr. Brisset has agreed that he was satisfied. We are going around in circles.

Mr. BELL: It seems to me that some of the points that Mr. Brisset brought to our attention last week still have not been cleared up. Could we not hear from him now? We have had a good deal of discussion. The lawyers on our committee apparently cannot agree. Could we have one more lawyer?

An Hon. MEMBER: To disagree?

Mr. LANGLOIS (*Gaspe*): When I was talking before the division, I was trying to explain the three points made by Mr. Brisset. The first one was the point Mr. Green was making a while ago, that the ship should not be seized for damage done by the agent. This point is met by the proposed amendment. The second point was that he did not want us to make the agent responsible for the doings of the ship owners. In answer to that, we say that it is in the Act, it has

been in our harbour legislation since 1913, and I do not think that we should deprive the board of the right it now has. The third point was the "charterer" being included in the definition of owner. His point was that the word charterer could also be interpreted as meaning the time charterer or voyage charterer. I am of the opinion, and counsel for the board is of the same opinion, that it means only such a charterer who has the physical possession of the ship and is, if I may express myself in that way, a temporary owner and therefore has the actual control of the ship, and that is the charterer by demise. I would respectfully submit that we are ready to meet that point too. We think that it does not change anything, but if it pleases Mr. Brisset and if it pleases the committee, we are ready to change "charterer" to "charterer by demise". I think that there we have a complete answer to the three main points made by the Shipping Federation of Canada.

Mr. NICHOLSON: Could we hear from Mr. Brisset?

The CHAIRMAN: No, he has given evidence already.

Mr. NICHOLSON: Mr. Chairman—

Mr. LANGLOIS (*Gaspé*): Ask him a question.

Mr. NICHOLSON: I think, Mr. Chairman, that it was the understanding of the committee when we adjourned last week that Mr. Brisset would be available. There have been a great many questions raised, and I think we could stand another hour. Mr. Brisset has been taking notes. I think he should have permission to discuss the question.

Mr. WINCH: May I ask a question of Mr. Brisset? The parliamentary assistant said a few moments ago, in his outline of the three points, that he had met all the objections of Mr. Brisset who was at the time shaking his head. So I now ask Mr. Brisset this question: in what way have these three points not met your submission?

Mr. BRISSET: I will answer you by saying that two points have been made. Under the amendment proposed by the parliamentary assistant, we no longer—

Mr. LANGLOIS (*Gaspe*): "Suggested" would be a better word.

Mr. BRISSET: The board no longer has the right to seize a vessel for injury caused by an agent or a charterer. That is a good point. The second point made arises out of the fact that now it is submitted that the word "charterer" should read "charterer by demise", and therefore we no longer make responsible the time charterer or voyage charterer, if I may use the common expression to indicate both. So the ship is liable for what the owner does, or what the charterer by time does. In other words, we no longer make the shipper responsible for the navigation of the ship.

But where the third point has not been met is here: as I have in my submission the other day, under the present Act the primary recourse is against the vessel, if the vessel causes damage, while the subsidiary recourse or secondary recourse is only against the agent, provided the first recourse is exercised.

I explained to you that in practice it is of no consequential effect because it never happens. With a ship in the harbour—I am speaking of the ordinary commercial ship, not the ship worth $1 million or $2 million—the board cannot get out of that ship enough security to cover its claim. Therefore, in practice there has not been any recourse exercised against the agent.

What we are seeking here is primary recourse against the agent instead of going against the ship first. I will use the illustration given by the parliamentary assistant. I am speaking of the extreme illustration he gave of a ship hitting all sorts of things and finally getting away without being caught.

I would say it was most unfortunate although, in practice it will never happen—why in such cases would you catch the agent for that? Why, if the

foreign ship should come here and does all that, why would you put the burden of liability on the Canadian agent who would not be covered by insurance and would never expect under ordinary Maritime law to be saddled with such liability?

I say it is perfectly unjust. Any provision of this sort would have the effect of putting the agent out of business entirely.

Now, to proceed a little bit further, I would like to clear up some confusion in perhaps some of the members' thinking.

Mr. LANGLOIS (*Gaspé*): Are you leaving that point?

Mr. BRISSET: No. I was just dealing with this point, that the third point is not met. I would like the board or this committee to understand what is meant by the word "agent". We have been given many definitions of the word "agent" here and they do not all agree.

I would like everybody to have a very clear understanding of what the word means. I think the best way we can do it is by giving an illustration and I will give an illustration that will appeal even to a "land-lubber".

Let us assume that I am the owner of an apartment house in this city but I do not have the time to look after it and run this apartment in the sense that I have no time to run after tenants.

I go to a real estate agent and I say to him: "Get me some tenants to fill up this building; sign the leases and collect the money"; and I also say to the agent: "I have a janitor who runs this building, and when he wants coal or wants paint, will you provide the coal and the paint for him?"

That is the extent of the agent's function in that case. And I say that it corresponds to the function of the agent in the ordinary sense of the word in a port when dealing with a ship.

Let us assume that my janitor, in running the building, puts too much pressure on the boiler.

Mr. HABEL: I would ask the witness this question: do you mean to say that you think that the comparisons are really parallel as between the man who owns real estate or an apartment house and a shipowner? Do you mean to say that the comparison is sound?

Mr. BRISSET: Every comparison is odious when it is made between a ship and land. We compared the actions of the ship the other day with those of an automobile, so I submit that I be allowed to pursue my illustration.

Let us assume that this boiler explodes through the negligence of my janitor and causes damage to city property or to the sidewalk. I do not think it would be fair to say that the city authorities have the right to proceed against the real estate agent, not any more than the board would have the right if the master of my vessel who is running my vessel collides with a wharf, or to say that the agent who handles the ship in any port and provides her with bunkers and cargo and therefore leases her space should be held responsible for the damage.

Now, let me give you another illustration.

Mr. LANGLOIS (*Gaspé*): May I ask you a question at this point.

The CHAIRMAN: Yes.

Mr. LANGLOIS (*Gaspé*): Does the witness think that, in his experience as a lawyer, he would stand a chance, no matter how slim it might be, of winning a case in a court of law without being able to satisfy the court that the agent had a mandate from the owner as his legal agent, and that he was in the exercise of this mandate when he caused the damage that he is being held responsible for?

Mr. BRISSET: Let me explain.

Mr. LANGLOIS (*Gaspé*): Yes, would you please explain.

Mr. BRISSET: Let me explain by answering the question. Under the Act as it stands, or under the amendment proposed, I would say yes, that is what is going to happen; but let me explain that.

Mr. LANGLOIS (*Gaspé*): You think there must be a mandate?

Mr. BRISSET: Here is what is going to happen: I used the illustration of the ship going into the port of Churchill and causing damage to the dock, with Montreal Shipping Company as the agent.

Assuming that the ship goes away and assuming that the National Harbours Board sues the Montreal Shipping Company as a worthy agent of the vessel, the National Harbours Board would have to prove that Montreal Shipping Co. were the agents of the vessel in order to come under the Act.

They will ask someone in the Montreal Shipping Company office to come into court. They will summon him and put him in the box and ask this question: "Was the Montreal Shipping Company the agent of the vessel or not?"

The witness will surely say "yes". He would never say "I call myself the vessel's agent; everybody calls me the vessel's agent, but Mr. Finlay and Mr. Langlois have said before a committee that the agent of the vessel is not the agent of the vessel but that he is the legal representative of the owner. He was the one who stood in the shoes of the owner, and I do not stand in the shoes of the owner; I am not the agent of the vessel."

I am sure that no witness will try to get around the very plain terms of the Act as proposed and the words used, "agent of the vessel".

Mr. LANGLOIS (*Gaspé*): Assuming that you are right in your interpretation, Mr. Brisset, do you not think that subsection 2 of section 16 of the present Act as it stands now does not give the same power to the board as the one you claim is sought by the amendment?

Mr. BRISSET: I am sorry to disagree.

Mr. LANGLOIS (*Gaspé*): You have the exact wording there, and I have given it before, but I will repeat it again:

> ...and for the amount of all such injury, damages, expenses and costs, the board has a preferential lien upon the vessel and upon the proceeds thereof until payment has been made or adequate security has been given for such damages, whether direct or indirect, and for the amount of all such injury, damages, expenses and costs as may be awarded in any suit resulting therefrom, and the owner, charterer, master or agent of such vessel is also liable to the Board for all such injury, damages, expenses and costs.

It is the same thing exactly.

Mr. BRISSET: I most respectfully disagree. It is not the same thing at all because you have to consider the present Act in its context. You have to read the whole section and a change has been made which is of the utmost importance in the amendment and I want to draw the committee's attention to the change. In the former Act it was stated in these words: "The board will have the right to seize a vessel under the following circumstances:"—and I will quote one—"If damage is done by the vessel to board property,"—and then the Act goes and says: "—the board shall have a lien on the vessel for the damages caused, for the expenses of seizing the vessel and of pursuing its claim." And then the Act says: "And furthermore the owner of the ship, the charterer and the agent shall be responsible for such injury, damages, costs, expenses,"—and I say this means that before you go to the agent you have first to seize the vessel because you would not use in the wording making the agent liable the words "costs of seizing the vessel and liening the vessel"

if it was not intended that before going to the agent you would seize the vessel. I say once you seize the vessel, which is the normal procedure, the matter of insurance comes into play. Security is given, and the board has a guarantee in its hand just as good as the ship to cover its damages. Having this guarantee there is no necessity to go against the agent. You do not drop money you have in one hand to run after somebody against whom you only have a subsidiary remedy, but the new Act or the amendment is quite different. We start with these words in subclause 7 of clause 16—and these are very important words and full of consequence—"Whether or not all or any of the rights of the board under this section are exercised, the board may proceed against the owner, the agent and the charterer." Therefore it means where we do seize the vessel when damage is done we can nevertheless go against the agent. Under the new amendment it is sought to exercise a primary recourse against the agent and therefore to let the ship go and sue the agent, and the Canadian agent here without the ship cannot go over the claim.

Mr. LANGLOIS (*Gaspé*): We can do that now under the present Act. There is no difference. The gentleman must agree.

Mr. BRISSET: I must say I entirely disagree.

Mr. LANGLOIS (*Gaspé*): The words mean something or they mean nothing at all, and we have here in section 16, paragraph 2, which I have quoted three or four times this afternoon, the following words: "The agent of such a vessel shall also be liable to the board for all such injury, damages, expenses and costs." It is all inclusive.

Mr. BELL: Yes, but that only applies to isolated subclauses (*c*) and (*d*) of clause 16. It only refers to the crews of the ship. It is not a case of liability at all. What you say is very true but it only applies to isolated cases.

Mr. BRISSET: Yes, you have to read the whole clause which says that you can seize the vessel under these circumstances, and it is only after you seize the vessel that you may have, under the present Act, an alternative course. I question the logic of such a recourse and as I have explained to the board many times on previous interviews it is of no consequential effect and the proof of that is that in the 18 years the Act has been in force not one claim has ever been made by an agent. We have always pursued the normal procedure of seizing the vessel and getting security. If I may just add these words to close my remarks, I have submitted to my principals—the Shipping Federation of Canada and the Vancouver Chamber of Shipping—the amendments suggested by the board here and I say for the interests I represent the amendments are quite satisfactory and the only one we are still seeking is the one already suggested by a member of this committee that the word "agent" be simply taken out of subclause (*e*) which we are now discussing. I maintain that if this word was taken out the board would still attain what it is seeking to attain. We have heard now a number of times what is meant by the word "agent"—a legal representative of the owner. That expression has been used many many times—the one who owns the ship, the one who can tell the ship where to go. Well, how is this man or this person called? He is called a charterer by demise and the most elementary book—Scrutton on "Charter Parties"—indicates that you do not have to use in your contract the words "charterer by demise." The court will look at your functions, at your contract, and even although you do not use the words "charterer by demise" the court will say that this person is a charterer by demise. This person has the functions of a charterer by demise and is liable for the owner. He is the owner pro hâc vice and is therefore responsible like an owner is.

Mr. LANGLOIS (*Gaspé*): Could we ask counsel for the board to briefly give the board's position regarding the last suggestion. Apparently we have only one point before us now, and perhaps counsel for the board could give us a word of explanation on it.

Mr. NICHOLSON: Agreed. We are making progress!

Mr. FINLAY: I think it is agreed then there is only one point which concerns the federation and that is the matter of proceeding against an agent for damage done by the vessel. That is the only serious point remaining. Am I correct?

Mr. LANGLOIS (*Gaspé*): Yes.

Mr. FINLAY: The only remaining point so far as the federation is concerned is that of proceeding against an agent of the vessel for damage done by the vessel. Now, as has already been pointed out, this is not new. The comment has been made on several occasions by counsel for the federation that ordinarily an agent is not held responsible for the acts of his principal. The principal for the acts of the agent, yes; but not the agent for the acts of the principal. That is absolutely correct. That is not disputed. This is a special statutory power which has existed, as was pointed out by the parliamentary assistant to the minister, since 1913 in Canadian harbour legislation. Ordinarily one cannot proceed against an agent for damage done by his principal, but that protection was considered necessary and has apparently been considered necessary since 1913. There is nothing new in that respect. We are merely reiterating—merely repeating what already exists in the present Act. Now, the prime point of counsel for the federation in that regard—I think I am correct in saying this—is that he says that before (under the existing Act, that is) it would have been necessary for us to seize the vessel before we could proceed against the agent, whereas now under the proposed amendment he says the situation has changed. That is, it would now be possible for us to immediately sue the agent without bothering to seize the vessel. His contention is that that constitutes a change and that previously it was necessary to seize the vessel before we could proceed agains the agent. Now, it is on that point that the board very definitely disagrees and I can only refer the members of the committee to the express terminology of section 16, subsection 2 of the present Act and to the corresponding sections which were quoted by the parliamentary assistant in the harbour commission statutes. There is nothing there that says that the board must seize the vessel and can go after the agent for the balance. That is the interpretation which Mr. Brisset has placed upon it, but I suggest it is absolutely impossible to find any case in the history of Canadian or English courts where it has ever been held that a person is obliged to exercise both recourses. You very often have a case where two remedies are available to the Crown and the courts have held that if the Crown has exercised one it may be precluded from exercising the other. But, I have never heard of a case where you are obliged to exercise both. That is what was argued here. We are told that unless we seize that vessel we have no recourse against the agent. But we are merely reiterating what already exists.

Mr. LANGLOIS (*Gaspé*): If the board proceeds against the agent without bothering with the owner, the agent can call the owner in warranty.

Mr. FINLAY: I was coming to that point. A good deal of emphasis has been laid upon the unfortunate position of the Canadian agent in that respect. He has been represented as rather an unfortunate chap who for a pittance represents the vessel in Canadian waters.

Mr. LANGLOIS (*Gaspé*): That is an understatement.

Mr. FINLAY: Yes, it is an understatement. If there are any pittances involved it is the pittance paid to the port authority whose property may suffer half a million dollars damage. In any event, the Canadian agent is in a far

better position to be well aware of the financial status of any foreign shipping line than is any Canadian port authority. That Canadian firm is not obliged to act as the agent for any vessel, but if it does, it does so at a profit and at a considerably greater profit than anything derived by the government for harbour dues. It would be actually nothing more than an inconvenience from the agent's standpoint. There is a certain amount of financial expenditure involved in that he must join his principal in warranty, but if his principal is Canadian there is practically no problem; if he is foreign he has to join him in warranty, and it is true that the Canadian agent may find himself held liable for amounts which he cannot recover, but why should the injured party be placed in a worse position than the agent who has voluntarily entered into the relationship?

Mr. CAVERS: There is nothing to stop the agent from getting a bond from his principal to protect himself.

Mr. LANGLOIS (*Gaspé*): We cannot prevent the entry of a vessel into a port.

Mr. GREEN: That sounds very nice. Here is a government body sitting here in Ottawa which has the right to seize these ships and a right which they should exercise and if they do not exercise it it is their own fault.

Mr. LANGLOIS (*Gaspé*): Not all the time.

Mr. GREEN: The agents cannot seize the ship, and yet the harbour board here takes the position: well, the agent is getting money out of handling the ship and therefore it is up to him if the ship does damage amounting to $100,000 and if we are not smart enough to seize the ship then the agent should have to pay that $100,000. Mr. Finlay compares those fees to the harbour board which are a good deal less than the fees received by these agents. There is no comparison. You have the whole attitude of governmental bodies that we give them every club to handle these shipping people. But remember out in the ports the result is that Vancouver harbour loses business because this harbours board here arbitrarily take power that they do not require. It is mighty serious from the point of view of the harbours.

Mr. LANGLOIS (*Gaspé*): You will agree that this has been in existence since 1913 and we have lost no business for the port of Halifax or Vancouver or any other port.

Mr. DECORE: Would it not be proper to empower the agent to seize under this Act?

(The committee adjourned for a division in the House).

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. LANGLOIS (*Gaspé*): Before we proceed any further, I do not know if I was understood by the stenographer when I gave my last sentence in respect to Mr. Green's argument to the effect that we may be losing business for the port of Vancouver. I want to repeat what I said. The committee was rising when I said that. I wish merely to repeat that this has been in the Act since 1913. It has lost no business to any national harbours, and it was the law of Canada when the old Harbour Commissions were in business since way back in 1913.

Mr. WINCH: If what the parliamentary assistant says is correct, and I have no reason to doubt him, and what Mr. Finlay said a few moments ago is correct, that you had this power since 1913 and that in this amendment there is no difference in principle, you are not asking for any more power than before. Will the parliamentary assistant then tell me why you cannot leave it the way it is in the existing Act. Why insist on this change in view of your statements?

Mr. LANGLOIS (*Gaspé*): I repeat again what I said earlier. The purpose of this definition of "owner" in clause 1 is not to amend the Act as regards the power of the Board to sue the agent and to seize the vessel. The prime purpose,

as mentioned in the explanatory notes, is to avoid repetitions in connection with the other sections of the Act of the words agents, owners, and so on. That is all. It is there in the explanatory notes very plainly.

Mr. GREEN: I do suggest that the department give further consideration to using the words in each section rather than try to have the definition. If they want to bind the agent in any particular section, then I think it would be much better to put the word "agent" in so that everybody knows exactly what the liability is. I would point out that in section 13 of the present National Harbours Board Act we have there the words, agents, owners, masters, or consignees. They will remain in the Act even after these amendments are passed because that section is not being changed at all.

Mr. LANGLOIS (*Gaspé*): Which section are you referring to?

Mr. GREEN: Section 13 of the Act, subsection 1, clause (*b*). Then, in section 19, which is not being changed at all, you have there the words owner or master or other person in charge of any vessel. I suggest that it will be much better if we have the words used in each place so that there can be no question of interpretation because with the bill as it is drawn now and the broad definition used, I think that you are covering agents where there is no need to cover agents, and it is only going to lead to trouble. That is true not only of the owner of the vessel but also of the owner of goods. You have covered bailees and carriers of goods, and I am very doubtful whether they should be considered in the same category as owners.

Mr. LANGLOIS (*Gaspé*): In reply to this, Mr. Chairman, I am no expert in drafting legislation, and I think I can give very little advice to the committee in this respect, but I must say that this proposed bill, as far as the drafting is concerned, has been carefully studied by the lawyers of the Department of Justice, who have extensive experience in that field, and they are apparently of the opinion that we should keep the proposed amendments in very concise terms and avoid repetitions. They did not feel that it was necessary to make any change to section 13 in regard to the suggestion made by Mr. Green. Here again I must confess that it is a matter of drafting legislation, and I am no expert at it.

Mr. GREEN: In section 13, the Governor in Council may make by-laws and so on for the direction, conduct and government of the board and so on, and the management of the harbours. Then we find:

> "the use of the harbours and their facilities by vessels and aircraft and the agents, owners, masters or consignees of the same".

I think it would be much wiser to have the actual words in each of these sections that are being changed, so that we know exactly what is covered. You said yourself that the word "owner" contained in the new 16(*d*) could not cover an agent or was never intended to cover an agent. If that is the case, put the word "agent" in where we want them covered and leave it out where we do not want them covered. Then there will be no misunderstanding.

Some Hon. MEMBERS: Question!

Mr. LANGLOIS (*Gaspé*): It is a matter of drafting.

The CHAIRMAN: There is an amendment moved to section 1.

Mr. LANGLOIS (*Gaspé*): There is no amendment moved. If someone wants to move it.

Mr. WINCH: I move it.

Mr. LANGLOIS (*Gaspé*): You moved it, Mr. Winch?

Mr. WINCH: Just on the "charterer by demise".

The CLERK: Mr. Winch moved that clause 1 of Bill 421 be amended by adding the words "by demise" after the word "charterer", in line 9 of page 1 of the bill.

The CHAIRMAN: All those in favour of this amendment, hold up their right hands.

Carried.

Mr. GREEN: I would move that the word "agent" be struck out in line 8.

Mr. LANGLOIS (*Gaspé*): Have you a seconder?

Mr. GREEN: The definition "owner" includes, in the case of a vessel, the agent, charterer by demise or master of the vessel. Just strike out the word "agent".

The CLERK: Mr. Green seconded by Mr. Bell moves that clause 1 of Bill 421 be amended by deleting the word "agent" where it appears in line 8 on page 1 of the bill.

The CHAIRMAN: All those in favour, raise their right hands.

Amendment lost.

Does clause 1 carry?

Mr. GREEN: Before clause 1 carries, I would like an explanation from the board as to why they need this broad definition of the owner of goods; why they are putting in such a broad definition for the owner of goods, covering not only the owner but the agent, the sender, the consignee or bailee and the carrier.

Mr. LANGLOIS (*Gaspé*): Do you want that as applying to the goods?

Mr. GREEN: To the goods.

Mr. LANGLOIS (*Gaspé*): The explanation for that is given in the explanatory notes. I wanted to add this, that in many, many instances the only person we have dealings, with whom the board is in contact, is the consignee and bailee of the goods. We do not know who the owner is or where he resides. The only person with whom we have dealings, for the renting of our property, is the bailee or carrier of the goods. That is why we have added these to the definition.

Mr. GREEN: Why do you include the carrier of the goods? He cannot be in any sense regarded as the owner.

Mr. FINLAY: As explained in the notes, the inclusion of carrier in the amendment is something new. The rest is nothing more than a clarification. I am speaking now of the agent of goods. The matter of the carrier is an amendment, and the purpose of that is that it is in relation to section 13, that is, the section which empowers the Governor in Council to impose charges.

Mr. LANGLOIS (*Gaspé*): Under section 13?

Mr. FINLAY: Under section 13 of the existing Act, the section which empowers the Governor in Council to impose charges on the owner of goods and so on. It is desired to obtain the power for the Governor in Council to make a by-law which may impose a charge directly upon the carrier. At present there could be considerable doubt as to whether or not we can impose the charge on the carrier. For instance, we may have a situation where it may be a railway line moving goods down to dockside. The board would wish to be clearly in the position where, instead of imposing the particular charges on the owners of those goods, we could impose the charges directly on the railway line for their use of board property in transporting those goods. We would impose the charges on the carrier. This would be done by the Governor in Council, by by-law. That is the purpose of including "carrier" in that instance. It is with reference to the by-law section, the imposition of charges. At present it is not entirely clear that the Governor in Council would have the right to impose the charges on carriers of goods in respect of those goods. That is an additional right which we are seeking to obtain. That is the explanation of "carrier". The rest is only repetition.

Mr. GREEN: Is this in the nature of a second string to your bow? In other words, if you cannot collect the tolls from the goods, then you will be able to collect them from the railway or trucking company?

Mr. FINLAY: As a matter of fact, in many instances under the by-laws as they stand the charges are not imposed upon the owners of the goods; they are imposed upon the party who deals with the board. That authority we already have. We are not changing it. But there is some question as to whether the Governor in Council can directly impose charges on the carrier of the goods, and it is that power that we are seeking to obtain.

Mr. GREEN: Why should you be able to charge tolls covering the goods, on the railways or the trucking lines that bring the goods to your dock?

Mr. FINLAY: In some cases in order to bring them on to our docks they are using our facilities. In practice the charge would be imposed on the railway line instead of the owners of the goods. We can already impose it on the owners or bailees and so on.

Mr. LANGLOIS (*Gaspé*): I will give another specific case. If you have goods which are to be forwarded, for example, from a railhead to a destination by ship, and the goods have to be stored in the National Harbours Board sheds for three or four days pending transshipment to a ship, that would be a case where there would be some charges on the goods and the carrier would have something to pay.

Mr. GREEN: Do you charge the railways anything now?

Mr. FINLAY: No. There are by-laws which, I may say, are very ambiguous. The carriers are not "taxed". But, simply because it has not been clear that we could "tax" the carriers the charge is regarded as a charge on the owner or the shipper of the goods. The railway lines up to a fairly recent date—as a matter of fact, now in practice—will pay those charges, but only as the representative of the owner of the goods. They will bill the owner of the goods for that amount.

Mr. LANGLOIS (*Gaspé*): They add it to the freight, as a back charge.

Mr. FINLAY: Exactly, as an additional charge. We are merely seeking the power to impose that charge directly on the railway. In some cases it is felt that the carrier, or the railway, should bear the charge rather than the owner of the goods, and it is that power which we are seeking to obtain.

Mr. GREEN: I could undestand you making a charge against the railways for the use of your railway lines, but surely that should not be in the nature of a charge on the goods.

Mr. FINLAY: It is not necessarily a charge on the goods. As a matter of fact, it may or it may not be computed on the quantity of the goods. At the present time in Montreal, for instance, the charge is, assessed back against the owner and it is computed in relation to the railway carriers, that is to say, so much per car. But, in fact, the railways argue—and perhaps correctly—that we do not have the authority or that the governor-in-council does not have the authority to impose the charge on the railways. The result is that although they have been paying the charge, they simply add it to their charges and bill the owner of the goods.

Mr. GREEN: Have you got any authority of that kind in the Act at the present time?

Mr. FINLAY: Authority to charge the carrier?

Mr. GREEN: To charge the railway.

Mr. FINLAY: That is dubious.

Mr. GREEN: Where is it in the Act now?

Mr. FINLAY: It is not; that is the point.

Mr. GREEN: You say it is "dubious"?

Mr. FINLAY: Yes. The only section under which it might conceivably perhaps be justified would be section 13 subsection 1, paragraph (*e*) which deals with the imposition of charges on goods shipped and so on, or shipped across harbour property. But it is questionable whether than can be interpreted as allowing us to charge the carrier as such. That is the difficulty or ambiguity which we want to remove by making it clear that we can charge the carrier directly.

Mr. LANGLOIS (*Gaspé*): Did I understand you to say that it is done in fact, but that the railway companies object to it and that is why you want to make it clear now?

Mr. FINLAY: Yes; it is done in practice. We do charge the railway companies and they simply pass it on to the owner, alleging, of course, that they are not subject to the charge.

Mr. GREEN: What sort of charges do you levy under this provision now? Storage charges, or what are they?

Mr. FINLAY: The various types of charges that might be imposed in so far as they relate to the carrier of goods in relation to the railway line. About the only charge I can think of off-hand that would likely be applied would be a charge for the use of the tracks. That is the most important use made by the railway company of any harbour property.

Mr. GREEN: Are you planning to charge the railway any storage charges on goods?

Mr. FINLAY: If the railway stores goods, that is, if the railway is the bailee of goods, they are chargeable in any event under the Act. But we merely wish to make them chargeable in their capacity as carriers. The railway may be a bailee in possession of goods and it may store goods. As a storer they are liable anyway. Quite apart from their capacity as a carrier, we can charge them the storage. There is no difficulty about that. But we are merely seeking to charge them as a carrier in their capacity as a carrier. To the extent they are acting as bailee and storer of goods, we already have the power to charge them. There is nothing new there.

Mr. GREEN: You are getting in position to levy new charges?

Mr. FINLAY: No. It is the same charge. The only difference is that the railway will now pay, not the owner of the goods.

Mr. GREEN: You said you are not charging any toll for the use of your railway lines?

Mr. FINLAY: I said we were imposing it on the railway. We charge it and the railway pays it, and then they assess the owner of the goods in the railway cars. We wish to make it clear that the railway itself is responsible for those charges. In fact, the railway will then be in a less favourable position to pass them on to its customers.

Mr. LANGLOIS (*Gaspé*): They will still charge them back to the customers?

Mr. FINLAY: That is possible.

The CHAIRMAN: Shall clause 1 as amended carry?
Carried.

Shall clause 2 carry?

2. Subsection (11) of section 3 of the said Act is repealed and the following substituted therefor:

(11) *Where* any member, by reason of any temporary incapacity *or temporary delegation to other duties by the Governor in Council,* is

unable at any time to perform the duties of his office, the Governor in Council may appoint a temporary substitute member upon such terms and conditions as the Governor in Council prescribes.

Mr. BELL: This is another case where the explanations do not seem to justify the change. I wonder about it here when you say that due to wartime conditions it was necessary to have powers such as are asked for here, I ask if it is necessary now. In section 2, subsection 1 and section 3 of the Act, it is suggested because of "temporary delegation to other duties by the governor in council, . . ." I ask why, if this power was necessary in wartime, it is not mentioned in wartime? Is it planned to use it other than in wartime, and if so, why?

Mr. LANGLOIS (*Gaspé*): Mr. Chairman, as explained in the explanatory notes of the bill, this is to cover the case when a board member is delegated to some other duty. Before that a substitute could be appointed under the War Measures Act. It was just done in one case, only in one case. Now that the War Measures Act is going out of existence we want the governor in council to be able to appoint a temporary substitute member and that is all.

The CHAIRMAN: Shall clause 2 carry?
Carried.

Shall clause 3 carry?

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

Mr. WINCH: I was interested in this section when it came up before the House and I would like to say a few words about it. I can very definitely understand the desire of the board and the department to give certain powers for policing on their own property and with effect to any property that comes under their jurisdiction or administration. I cannot understand why a law enforcement officer of the board who has been brought within the meaning of the Criminal Code as regards a police officer should have that same jurisdiction up to 50 miles away from the board property. Now that means—although as I have heard several times that the waterfront under the jurisdiction of the board in Montreal is some 30 miles—they are covered under this Act not only within the 30 miles, but it would mean they would have the same jurisdiction as a police officer 50 miles beyond the actual property. I have made several inquiries of lawyers amongst the members, and they all agree that is the interpretation of the wording of this section. That is, 50 miles beyond the property limits of the board. I cannot under any consideration see the necessity of granting that much authority for that distance and I would like to suggest for the consideration of the committee an amendment by striking out the word 50 and inserting the word 5, or perhaps 10—but in order to make a suggestion I suggest 5 miles instead of 50 for the purposes of discussion—and if I could have a seconder I will so move.

Mr. LANGLOIS (*Gaspe*): Could I give you a short word of explanation? This 50 mile limit was put into the amending clause in order to cover a case like the one in Montreal where the board's property extends for 30 miles, and to cover the specific case which we had recently in Montreal, I think, where some goods were stolen from the board's property and were taken some 30 miles away from the property and hidden there. Before we could get the wheels in motion to go and search the property for the goods, the goods were gone. We also have this other example which I gave in the House the other day when speaking on the second reading. We have violations of the speed limit on the Jacques Cartier Bridge in Montreal. We have to chase these offenders—these motorists—and we may have to cover several miles before we can catch up with them, particularly if they are travelling at a great speed, otherwise, you see, there is no

possibility of arresting the offenders. So these are some of the cases which we envisaged by this section and which we want to cover in order to give the board's constables effective jurisdiction to apprehend those violators of the speed limit and with regard to goods stolen and taken away from the board's property. However, I personally have an open mind on the subject, and I must confess I have even drafted an amendment leaving the mileage blank. I am in the hands of the committee, but I do not think we should cut it down too much, because in doing so we might prejudice the position of the board in future cases by rendering null the jurisdiction we are giving the constables.

Mr. WINCH: Could I ask a question there? On the case you stated in Montreal where this man stole some goods from the property and hid or stored them some miles distant, did you have to swear out a search warrant before you could go into the other property?

Mr. LANGLOIS (*Gaspe*): Yes.

Mr. WINCH: Then if you have to go through the process of swearing out a search warrant can you not get an officer right there who is inside that jurisdiction for the serving of that warrant and for the making of the search?

Mr. LANGLOIS (*Gaspe*): Counsel for the board is probably in a better position to answer that than I am.

Mr. FINLAY: The explanation is only this: it is quite true, as you say, that it would be absolutely necessary to get a search warrant. Actually the jurisdiction of the police constable is not enlarged in that respect. The only advantage—and that of course is why the parliamentary assistant said the range was not terrifically important—is that in the Montreal case had our police been able to go before the magistrate and get the warrant and then proceed we believe we could have acted in time, but it so happened that we found it difficult to get cooperation from some of the local police officials in actually making the search. You see, after having obtained the warrant our men were still not police officers in that area. It is not suggested that our harbour police should be able to do anything in the way of searching without authority from the court. There is nothing in the Act to that effect. They must go to the court like any other police officers. It is merely that our own police would be able to act instead of delegating it to local police; that is, within a certain range. That is the only purpose of it, but then again, as has been pointed out, the offence must be committed on board property or in relation to board property. That is the only purpose of this 50 miles.

Mr. DESCHATELETS: Do you not use the servces of the mounted police presently in the execution of these warrants?

Mr. FINLAY: No. As a matter of fact, the mounted police, I might say, are far too busy with various other matters—they are a relatively small force—and they are simply not in a position to attend to a good many of the relatively minor affairs that do arise in connection with port administration.

Mr. DESCHATELETS: Then I suppose you have to go through the ordinary execution by the justice of the peace in Montreal?

Mr. FINLAY: We would not change that. We would still have to go to the court.

Mr. DESCHATELETS: Then I am perfectly aware of the situation and I admit that most of the time action would be delayed for one reason or another. I am perfectly aware of the situation.

Mr. BELL: I feel quite strongly about the increase in jurisdiction and to my mind the difference between 5 miles and 50 miles is a point that should be argued. Fifty mlies is a serious extension of jurisdiction. There might be some small excuse or justification for this extension, but I do not think we

should go so far and give the National Harbours Board complete jurisdiction over an area. For example, take Saint John or Vancouver. The policing of the Harbours Board cops there is generally in connection with pilfering and liquor traffic and small things like that where the relations of the longshoremen and the police come into contact all the time. The longshoremen probably pinches a case of liquor, takes it back and hides it somewhere and the Harbour Board police start to completely take over the jurisdiction of the entire city. Added to that is the possibility that under section 2 you might go out and appoint a lot of temporary officers and in that way you could completely take over and police an entire town. Now, I am being absurd about it and I realize there might be small difficulties which would be overcome by the increased jurisdiction and by which you could quickly apprehend a criminal, but I feel you have gone quite a long way, Mr. Chairman, in this regard in carrying it—to take another example—to almost the point of a police state, if you wanted to act in this way.

Mr. LAFONTAINE: Do you have to get warrants?

Mr. LANGLOIS (*Gaspé*): Yes, to search.

Mr. HOSKING: Would the Harbour Board policemen not be still under the control of the local authorities in that they have to go to someone in the local court to get their search warrant and if they were taking on powers beyond their intended powers, the local authorities would just say: "You will have to give us some proof of that." They would be so awkward and slow they would not get anywhere anyway. This is purely and simply a case of giving the policemen of the Harbour Board the right to go to any place within a reasonable distance without going through two or three different magistrates to get a search warrant.

Mr. WINCH: You would still have to go for a search warrant.

Mr. HOSKING: I believe there is a restriction that it stays within the province. So that it would stay in provincial jurisdiction. With those safeguards I see no reason why we should have any difficulty. All we want to do is supply the legislation which will permit the person who committed the act to be caught. It is purely a case of expediency to do the right thing.

Mr. WINCH: It gives them authority over all of Vancouver.

Mr. BELL: These policemen would not come under ordinary criminal jurisdiction. It is small local affairs we are concerned with, and the relationship between the people of the municipality and the police is the important thing. These police officers are subject to the board and they might use their power arbitrarily with not the same consideration that an ordinary member of the police force who has to recognize the community itself would. They might not appreciate their powers; and the fact that they are responsible to a government body and have a certain arbitrary nature about themselves to my mind could have a bad effect on the community.

Mr. CAVERS: Does that apply to special constables appointed under the Railway Act?

Mr. GREEN: That brings up a point which I think is important. The explanation of the clause is as follows: "The purpose of the new section is to eliminate the current necessity for swearing in harbour police as special constables of some municipal or provincial force or of the R.C.M.P. The status created would be analogous to that established by the Railway Act as regards railway constables." Then, if you turn to the Railway Act you find it only gives railway constables jurisdiction in all places not more than a quarter of a mile distant from such railway. Here we have the difference between a quarter of a mile and 50 miles, and from my point of view, that is where the bill is at fault.

The harbour police are not police in the true sense of the word. I know in Vancouver they are not like a regular police force, they are not trained in the same way; they cannot be. They are just a local force which everybody thinks is to prevent stealing on the harbour board property. The railway police are in much the same category. We have railway police in Vancouver, both C.P.R. and C.N.R., and the general public opinion is that the place for the railway policemen is on the railway property in the case of the railway police and the harbour board property in the case of the harbour police, and we do not want them running into the city making arrests.

If people have to be arrested outside for crimes committed on the waterfront then let the regular police force handle it. They are trained for that sort of thing and it will only lead to confusion if we are to have harbour police rushing out to arrest people in the middle of the city, or railway police doing the same. As a matter of fact, railway police are particularly careful not to get involved. I have never heard of a case where the railway policeman has gone into the city to arrest a person.

Mr. LANGLOIS (*Gaspé*): How far would you suggest he should go?

Mr. GREEN: I would think that the same provision should apply here as in the case of the Railway Act. That has been in effect for many many years and there has been no trouble from it. It is an analogous situation just as the explanation says and I would think that if they had the same right of going a quarter of a mile off the harbour board property nobody is going to be very badly hurt. There might be a case where they could not catch a speeder.

Mr. LANGLOIS (*Gaspé*): Do you think they could catch a speeder in a quarter of a mile?

Mr. GREEN: No. There might be a case like that where they could not apprehend an offender, but the regular police can always do that, and I think this change is going much too far. I think it will only lead to trouble.

Mr. LANGLOIS (*Gaspé*): As I said I have an open mind on the subject, but I just want to warn the committee that we should not on the one hand give powers to the constables by making them peace officers and yet on the other hand take these powers away by not giving them enough jurisdiction. A speedster on the Jacques Cartier bridge would make the constable the laughing stock of the town, if he could only go a quarter of a mile and then has to ask somebody else to go after the speedster.

The other point made by Mr. Green was that he said constables are only glorified watchmen. I agree with him on that point but I must say that since we are going to make them police officers it is the intention of the board to give them training as such. We cannot give them the power to act as police officers without training them for that job. I just want to warn the committee that we should not cut it too much because otherwise there is no use giving them the power.

Mr. CAVERS: I do not know that I am entirely in agreement with the 50 mile limit placed here, neither do I know that five miles is far enough. I would suggest that probably 25 miles would be a reasonable compromise. The railway, it seems to me, is a little different. The railway police are in a little different position from the police under the provisions of this Act with regard to national harbours because the railway police constable has jurisdiction to follow a criminal all the way across the line; he might have to go from Sydney to Vancouver, but can follow him all the way across the railway line. In this case the jurisdiction is confined, for instance, in Montreal to 30 miles, in Halifax to probably 10 or 12 miles, and in St .John to considerably less. So, their jurisdiction is limited to some extent, and I do not think we are doing

too much here if we give them some jurisdiction beyond the harbour property in order to follow someone who commits an offense on the harbour property.

Mr. McIvor: I do not see anything to be gained in cutting down the distance. I think the only thing is you are hampering the police officer.

Mr. Carter: 25 miles is just the same as 50 miles. 25 miles would cover any town or city. The question I would like to ask is does this 50 mile limit extend seaward as well as landward? Can you chase a man 50 miles out to sea and catch him. Is that not outside of the territorial waters?

Mr. Finlay: It is quite true that it is outside the territorial waters, but suppose the offender is a Canadian, there is nothing to prevent a police officer from apprehending a Canadian anywhere either 50 miles or 100 miles, assuming the police officer had the jurisdiction in the first place. If you are dealing with foreign vessels, you may run into ramifications of international law, but that is a separate issue.

Mr. Carter: This law is meant to be applicable to anybody, not merely to Canadian citizens.

Mr. Finlay: Let us say that the mounted police have jurisdiction, but that jurisdiction does not necessarily empower them to act against foreigners outside the limits of Canada. It must after all be read subject to those limitations.

Mr. Green: Suppose a murder were committed on the waterfront on harbour property. I do not think there is any question but that if it was a serious crime it would be handled at once either by the city police or, in our province, by the mounted police, who police the province. These harbour police are only for the protection of harbour board property. It says that, actually, in the section.

I am a little worried about the parliamentary assistant's statement that now they are going to build up a police force and train them and so on, because I do not believe that the National Harbours Board should have a police force of that kind. I think they should be restricted to a police force to protect waterfront property. If that is all they are to be, then they certainly do not need to go any further off the harbours board property than the railway police can go off the railway property.

It is a very serious matter to have harbour police running into the city and arresting people. That is only going to make trouble. In the first place, the Dominion is supposed to keep out of the police business. That is primarily the responsibility of the provinces and municipalities. Here we have a federal police set up with power which is almost certain to bring them into conflict with the local police. I do not see any justification for a move of this kind whatsoever. Only seven harbours in Canada come under this Act; the other cities that have harbours do not come under the Act and will not have harbour police coming around arresting people. I do not think cities which happen to be under the National Harbours Board Act should be subject to an additional police force, which will be the result if this amendment goes through.

Mr. Langlois (*Gaspé*): I wish to say here that Mr. Green's objection in regard to the arrest of a murderer will still hold for a murder committed on our property. It would still hold good if the jurisdiction were five miles or one mile, and even in Montreal, for example, our constables are presently sworn as municipal officers, and they have the power to arrest. As far as the training of a police force is concerned, I do not think that is the interpretation that should be placed on what I said. I said it was the intention of the board to train our officers in order to put them in a better position to discharge their additional duties that we are going to give them, and I do not think anybody here would object to that. If we are going to give them the power of peace officers, I think it is a good thing to train them, and it is a good safeguard for the board to act in that way. I just want to repeat that we are in the hands of the committee, and it is up to the committee to decide.

Mr. WINCH: I do not quite see that last phrase of the hon. member's statement. If there is anyone at all who is caught in the commission of any kind of a crime, a private citizen has the right of arrest.

Mr. LANGLOIS (*Gaspe*): Yes.

Mr. WINCH: But, as I view this, I am rather doubtful of it, because I do not know the situation too well in Montreal and I have to accept what you said. From what I have heard said by yourself and others, it is time something was done in Montreal to place the police force on a proper basis. I know that in Vancouver it is not perfect; I think we have a fairly good and efficient police force and I think there might be some degree of antagonism perhaps if you had a conflicting force. I also think that it does not make for a good and efficient service. I am speaking now of towns or cities, and especially those who are responsible for the administration of the law enforcement in towns or cities, having not only alongside it but right within it some other law enforcement body that can move in with the identical powers of the regular police force of that city. Under this section your harbours board policemen would have the complete power of police officers or peace officers within the meaning of the Criminal Code for doing anything that a law enforcement officer can do as long as the actual act was committed on the property of the board or under the administration of the board. As long as the criminal act was done on the board's property, you can then under the present wording, inside 50 miles, use the complete powers of any other police officers, and I must admit that I am a little doubtful of that. I personally would very much go along with the suggestion of Mr. Green that it be the same as under the Railway Act. I think it would be a good idea if the members could see their way fit to accept that.

Mr. BELL: Is it not conceivable that in the case of a suspected seaman or longshoreman, or something of that kind, the harbour police would go and sweep through a town completely with perhaps the powers of the local police? They could shadow and question and bother the general residents of the community, whereas—

Mr. LANGLOIS (*Gaspe*): They can do that now. They can question anybody now when they are investigating something that has happened on the board's property.

Mr. BELL: They would not go far if they knew that they could not carry on their questioning into actual arrest. The tendency now—

Mr. LANGLOIS (*Gaspe*): In Montreal they are municipal officers. They can do that now and arrest them.

Mr. BELL: They know they cannot arrest.

Mr. LANGLOIS (*Gaspe*): In Montreal they can.

Mr. BELL: It is an exception.

Mr. LANGLOIS (*Gaspe*): It is a big exception. It is the largest port in Canada.

Mr. BELL: If you gave us some business around Saint John, we would be a large port. However, the tendency now is for the harbour police, when they have a suspect who is causing trouble, to go to the local police and let them handle the whole situation. They are the people who are dealing with the community. They know the local conditions and they will conduct it in the way in which they conduct all the business.

Mr. LANGLOIS (*Gaspe*): Are you speaking of an offence not related to the board's property? The offence must be related to the board's property.

Mr. BELL: If they suspect someone might have something to do with the waterfront in their area, under the Act as it now stands, they would go to the local police, turn the whole thing over to them and let them know their supicions. They would let the local police carry it out in the way all the business of the

community is carried out. If this further power is given, I suggest that what might happen is that if these people, seamen and longshoremen, are suspected in any way, they will immediately begin to shadow and follow them around town. In an extreme it may well be that there will be a police state. There is a tendency to do it now where they have the power to arrest.

Mr. LANGLOIS (*Gaspé*): I am just being told that the same situation prevails in Halifax and Saint John where our constables are presently sworn as municipal officers and have all the powers now to which you object.

Mr. BELL: I cannot understand why these changes have to be made. It is suggested that the change was justified purely because of a certain Act in Quebec, and that the harbour police were embarrassed because they could not continue over a certain limit or area. I respectfully suggest, that we are being asked to change our Act and to cause the police and the government to come into disfavour in a community just because of one incident or exception, that is, because of just one time when it was necessary to go out of the area. Therefore I suggest it should be left over.

Mr. LANGLOIS (*Gaspé*): We suggest that the present Act be amended in that way because in some quarters we found a reluctance on the part of the municipal authorities to swear our constables as municipal police; and there is another reason. Take for example Montreal where there are four municipalities in the district covered by the property of the National Harbours Board; and take Vancouver where you have three municipalities: Vancouver city proper, Vancouver north, and Burnaby; and you can see that it could create at times great inconvenience; and besides there is a reluctance which we find in some quarters to swear our constables as municipal officers.

Mr. GREEN: What would be the difficulty in swearing in your officials in that regard?

Mr. LANGLOIS (*Gaspé*): If he is sworn in one municipality, then he is restricted to the limits of that municipality and he would have to be sworn in all three to be effective.

Mr. GREEN: Well, it is not much of a job to get the constable sworn in all three of them.

Mr. LANGLOIS (*Gaspé*): Providing the municipal authorities did not object.

Mr. GREEN: Has there been any objection?

Mr. LANGLOIS (*Gaspé*): There has been reluctance to doing it.

Mr. GREEN: Reluctance to doing it in Vancouver?

Mr. LANGLOIS (*Gaspé*): We would rather not name the municipalities. In some provinces we have our troubles with the provinical police, but not in Vancouver at any rate. We can say that we have no trouble in Vancouver.

Mr. GREEN: Under this amendment they would get wide-open jurisdiction as peace officers within 50 miles of harbour property, in every direction. Is that right?

Mr. LANGLOIS (*Gaspé*): That is right.

Mr. GREEN: I cannot see it.

Mr. LANGLOIS (*Gaspé*): Well, we are in the hands of the committee.

Mr. HOSKING: Mr. Chairman, I hereby second Mr. Cavers' motion that it be restricted to a 25 mile limit.

Mr. CAVERS: I so move.

The CHAIRMAN: Will you please read the amendment.

The CLERK OF THE COMMITTEE: Mr. Winch's amendment was that clause 3 of bill 421 be amended by deleting the word "fifty" in line 11 on page 2, and

substituting the word "five". Mr. Cavers moved in amendment that the word "five" of Mr. Winch's amendment be deleted and the words "twenty-five" substituted therefor.

The CHAIRMAN: All those in favour of Mr. Cavers' sub-amendment will please signify.

Mr. GREEN: What are we voting on, Mr. Chairman?

The CLERK OF THE COMMITTEE: Mr. Cavers moved that the word "five" be deleted from Mr. Winch's amendment and the words "twenty-five" substituted so that it reads:

not more than twenty-five miles distant from property. . . . .

Mr. GREEN: I cannot move a further sub-amendment, can I?

The CLERK: Not at this time.

The CHAIRMAN: All those in favour of Mr. Cavers' motion will please signify? Those against?

Carried.

Mr. GREEN: Mr. Chairman, I would like to move that "twenty-five" be reduced to a quarter of a mile, as it is in the railway act. I move that the paragraph be amended by inserting "a quarter of a mile" as the distance, as it is under the railway Act.

The CHAIRMAN: The amendment has been carried.

Mr. GREEN: No. You said that the sub-amendment was carried, "five" being deleted and twenty-five being inserted. Now I move in amendment to that, "a quarter of a mile."

The CHAIRMAN: The "twenty-five" was carried.

Mr. GREEN: It was carried as a substitute for five miles.

Mr. LANGLOIS (*Gaspé*): I do want to oppose Mr. Green's suggestion, because I think that this matter has already been decided by the sub-amendment which was carried and which sets the distance at twenty-five miles. I think that the committee can hardly now entertain any further amendment since the committee has already voted on the matter.

Mr. NICHOLSON: On a point of order, Mr. Chairman, I think it is customary when an amendment is voted upon to enquire: "Are you ready for the motion as amended?" But that question was not asked and Mr. Green was quite in order in moving a further amendment. The committee can dispose of it in voting for or against it, but I thought he was quite in order in making his motion, and until it has been disposed of, and until the final motion is put, then anyone can make a further amendment.

Mr. GREEN: 25 miles in our case is just as bad as 50 miles, because 25 miles covers the whole lower mainland and about 15 different municipalities. The bulk of the population of the whole area is within those 25 miles so this would give the Harbour Board police the power to go out and make arrests in all those municipalities—

Mr. NICHOLSON: Covering half a million people.

Mr. GREEN: —covering at least one-half million people, and I do not think it should be that way.

The CHAIRMAN: Does Mr. Green's amendment carry?

Hon. MEMBERS: No, no.

Mr. HABEL: You have to put a motion.

Mr. LANGLOIS (*Gaspé*): And then Mr. Green will move his amendment.

Mr. GREEN: I think Mr. Nicholson is right. Once the subamendment has been defeated then the chairman should put the motion as amended and to that I move a subamendment of one-quarter of a mile.

Mr. LANGLOIS (*Gaspé*): The vote is on the subamendment.

The CHAIRMAN: The vote is on the subamendment. All in favour of same raise your right hand?

The CLERK: Seven are in favour.

The CHAIRMAN: All those against it raise their right hand.

The CLERK: Eleven are against.

The CHAIRMAN: The subamendment is lost. Does the clause as amended carry?

Carried.

Subclause 2 of clause 4, does the clause carry?

Mr. CAVERS: I move that subclause 2 of clause 3 be amended so that the word "fifty" in line 26 be substituted for the word "twenty-five".

The CHAIRMAN: All those in favour please signify. Agreed.

Does the clause as amended carry? Carried.

Clause 4. Carried.

Clause 5? Carried.

5. (1) Paragraph (*c*) of subsection (1) of section 12 of the said Act is repealed and the following substituted therefor:

(*c*) where the estimated cost of the work does not exceed fifteen thousand dollars.

(2) Subsection (2) of section 12 of the said Act is repealed and the following substituted therefor:

(2) Whenever tenders are required by subsection (1) to be called, the Board shall, after having given to the tenderers reasonable notice of the time and place of opening of the tneders, open them in public, and may within a reasonable time thereafter award the contract.

(3) Notwithstanding subsection (1) and (2), no contract for the execution of any work shall be awarded by the Board, without the approval of the Governor in Council, for an amount in excess of fifteen thousand dollars, unless

(*a*) tenders are called by the Board by public advertisement for the execution of the work, and not less than two such tenders are received by the Board

(*b*) the person to whom the contract is to be awarded is the person who submitted the lower or lowest such tender; and

(*c*) the amount of the contract as indicated by the tender of the person to whom the contract is to be awarded does not exceed fifty thousand dollars.

Mr. GREEN: I would like an explanation of clause 5.

Mr. LANGLOIS (*Gaspé*): Well, clause 5 is merely to put the National Harbours Board in the same position as other departments of the federal administration. As you know, in 1951 an amendment was made to the Public Works Act amending it so that the limit of non-tender contracts would be raised. In the case of the National Harbours Act it was set in 1936 at $10,000 and we now raise to $15,000 and this is merely to comply with the legislation concerning federal contracts already in the statutes.

Hon. MEMBERS: Carried.

Mr. GREEN: The Public Works Act did not deal with this question of the Governor in Council passing on tenders, and the parliamentary assistant has not explained the change in that which is made part of this section.

Mr. LANGLOIS (*Gaspé*): I did not get your question.

Mr. GREEN: The section does away with the necessity of getting the approval of the cabinet to tenders in certain cases.

Mr. LANGLOIS (*Gaspé*): Are you dealing with subclause 2 of the clause?

Mr. NICHOLSON: Subclause 3.

Mr. LANGLOIS (*Gaspé*): That is to bring this act in line with the Financial Administration Act and it is right there in the explanatory notes if you will read them.

The CHAIRMAN: Shall clause 5 carry?
Carried.

Mr. GREEN: At the foot of the page of explanatory notes opposite page 2 in the bill we find the following:

> The purpose of this provision is to bring Board practice in respect of the award of contracts into conformity with that already established as regards Government departments by the contract regulations made under authority of the *Financial Administration Act*. In particular:—
> (*a*) under the present Act, contracts could, in cases of pressing emergency, be let for any amount without approval of the Governor in Council. The amendment would require such approval if the amount exceeds $15,000;
> (*b*) on the other hand, under the present Act, the Board could not award a contract for more than $15,000 without approval of the Governor in Council (except in emergency cases) even although the Board had made a public call for tenders, had received two or more tenders, and was proposing to accept the lowest. The amendment would raise the figure from the above-mentioned $15,000 to $50,000 in such special circumstances.
>
> As already stated, both the above amendments would conform to the practice already established in respect of Government departments.

Then there is provision for an amount up to $50,000 being without the approval of the Governor in Council. Now why is that amount raised that high?

Mr. FINLAY: The explanation there in the case of the $15,000 is this: it was possible under the Act, as it existed, for the board to award contracts for any amount in emergency cases without calling for tenders. Now, that has been eliminated. We are now obliged to call for tenders in every case if the amount exceeds $15,000. That is the first change. As regards the matter of $50,000 the former or existing Act requires the board to get the authority of the Governor in Council in every case where the amount of the contract is more than $10,000 or $15,000 under the amendment. But government departments under the Financial Administration Act are permitted to award contracts up to $50,000 without the approval of the Governor in Council providing they have complied with certain conditions, that is they must have made a public call for tenders, they must have received two or more tenders and they must have accepted the lowest of those tenders. In those cases, government departments are permitted to award contracts up to $50,000 without the express authority of the Governor in Council. That is what is being inserted here.

Mr. GREEN: Clause (*a*) of subsection 1 of the present section 12 has not been repealed, has it?

Mr. FINLAY: Yes, you see there is a new subsection substituted.

Mr. GREEN: That is paragraph (*c*).

Mr. FINLAY: No. (*c*) has to do with the estimated cost of the work. That is subsection 1(*c*), but below that you will notice subsection 2 of section 12 is repealed and the following is substituted.

Mr. GREEN: Subsection 1(*a*) of section 12 is not repealed.

Mr. FINLAY: It is paragraph (*c*) of subsection 1.

Mr. GREEN: There is still the power of the board to accept a contract without calling for tenders in the case where the work can be done by servants of Her Majesty. Are those powers not still in existence?

Mr. FINLAY: Oh, no. The restriction now is that under subsection 1 the board is required to call for tenders in every case.

> Whenever tenders are required by subsection (1) to be called, the board shall, after having given to the tenderers . . . .

and so on, then "notwithstanding subsections 1 and 2, no contract for the execution of any work shall be awarded by the board, without the approval of the Governor in Council for an amount in excess of $15,000." Formerly we could award it without the approval of the Governor in Council in emergency cases.

Mr. GREEN: Now you cannot do that any more?

Mr. FINLAY: No, unless under $50,000.

Mr. GREEN: Unless it is under $15,000.

Mr. FINLAY: Yes, $50,000.

The CHAIRMAN: Shall clause 5 carry?
Carried.

Clause 6.

6. (1) Paragraph (*b*) of subsection (1) of section 13 of the said Act is repealed and the following substituted therefor:

> (*b*) the use of the harbours, harbour property or other property under the administration of the Board by vessels and aircraft and the owners thereof, the leasing or allotment of any harbour property or other property under the administration of the Board, and the purchase or sale by the Board, subject to such limitations and conditions as the by-laws may prescribe, of any property other than real property;

(2) Paragraph (*e*) of subsection (1) of the said section 13 is repealed and the following substituted therefor:

> (*e*) the imposition and collection of tolls on vessels or aircraft entering, using or leaving any of the harbours; on passengers; on cargoes; on goods or cargoes of any kind brought into or taken from any of the harbours or any property under the administration of the Board, or landed, shipped, transhipped or stored at any of the harbours or on any property under the administration of the Board or moved across property under the administration of the Board; for the use of any property under the administration of the Board or for any service performed by the Board; and the stipulation of the terms and conditions (including any affecting the civil liability of the Board in the event of negligence on the part of any officer or employee of the Board) upon which such use may be made or service performed;
>
> (*ea*) the transportation, handling or storing upon any property under the administration of the Board or any private property within any harbour under the jurisdiction of the Board of explosives or other substances that, in the opinion of the Board, constitute or are likely to constitute a danger or hazard to life or property;
>
> (*b*) on the other hand, under the present Act, the Board could not award a contract for more than $15,000.00 without approval of the Governor

in Council (except in emergency cases) even although the Board had made a public call for tenders, had received two or more tenders, and was proposing to accept the lowest. The amendment would raise the figure from the abovementioned $15,000.00 to $50,000.00 in such special circumstances.

As already stated, both the above amendments would conform to the practice already established in respect of Government departments.

Clause 6(1)—s. 13 (1)(*b*):—The Governor in Council is already empowered, under the Act, to make by-laws for the management of property under Board administration, for the leasing or allotment of such property, for numerous other specified purposes and, in general, for the doing of anything relevant to the Board's functions under the Act. As a matter of clarification the amendment includes an express reference to the capacity of the Governor in Council to make by-laws governing the sale and purchase by the Board of property other than land. The sale and purchase of land are already specifically covered by other provisions of the Act.

Clause 6(2)—s. 13(1)(*e*):—The present paragraph empowers the Governor in Council to make by-laws for:

(*e*) the imposition and collection of rates and tolls on vessels or aircraft entering, using or leaving any of the harbours; on passengers; on cargoes; on goods or cargo of any kind landed, shipped, transshipped or stored in any of the harbours or moved over harbour tracks, and for the use of any wharf, building, plant, property or facility under the jurisdiction of the Board and for any service performed by the Board;

Such by-laws made under the Act as relate to Board charges are, in substance, simply a statement of the contractual conditions between the Board and any party desiring the particular Board services or the use of the property. It is therefore proposed that the Act should place beyond doubt that, in cases of that type, the Board may contract itself out of liability for negligence. In a number of instances—such as the granting of permission to bring explosives into a harbour or the acceptance of highly perishable goods in storage—the revenue does not justify the risk incurred by the Board unless the Board (like any private operator in the same circumstances) possesses the capacity of restricting the liability which could conceivably arise through the negligence of some minor Board employee. It is, indeed, considered that the desired capacity to restrict liability already exists but the amendment would place the matter beyond dispute.

Clause 6(2)—*s.* 13(1) (*ea*):—New. The Board was intended to exercise a general supervision over all harbours under its jurisdiction, including even private property.

(3) The said section 13 is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

(3) Any by-law may be made binding upon Her Majesty in right of Canada or any province.

(4) A copy of any by-law certified by the Secretary of the Board under the seal of the Board shall be admitted as conclusive evidence of the provisions of such by-law in any court in Canada.

Mr. GREEN: It is a long clause, clause 6. There is a provision at line 30. the stipulation of the terms and conditions (including any affecting the civil liability of the Board in the event of negligence on the part of any officer or employee of the Board) upon which such use may be made or service performed.

What is the purpose of putting that in?

Mr. LANGLOIS (*Gaspé*): We think that we are not adding anything, that we have the right now to do that and we can do it under our by-laws. You see our by-laws are merely a reflection of the contractural conditions intervening between the user of our property and ourselves and these contracts can contain a stipulation as to the limitation of our liability in certain cases, and the by-laws merely reflect those contractural conditions and now we want to make it clearer by putting it in the Act. There is no other purpose.

Mr. GREEN: Have you been making contracts which excluded any liability on the part of the board?

Mr. FINLAY: In one case. There is one situation to my knowledge the harbour of St. John. Under one of our by-laws there is certain accommodation provided for perishable goods. The charge is low and the risk is great from the standpoint of the board in accepting these goods. However, the board is prepared to accept them at owner's risk and that is what it amounts to. We are not prepared in those cases to be possibly subject to a claim of negligence on the ground that the temperature was too high or too low with respect to these particular goods and therefore there is a provision in the by-laws to the effect that anybody storing goods under this by-law does it at his own risk. That is the type of thing that is contemplated. Another example we had is the matter of explosives.

Mr. BELL: Suppose some ship brings explosives into a harbour and they dock at one of your piers and you contract yourselves out of any liability for danger from the explosives—I do not know the details of it—but I am wondering what check there would be on the responsibility or the control of that person you contract with. In other words, there is a duty on you as the owner of property in a city to see that the responsibility and liability that you are passing on to someone else goes to the right hands. Is there a check on that?

Mr. FINLAY: The check is this. As between ourselves and X, who brings the explosives, we have this contractual provision. We, in other words, can go against X, but that does not protect us against a third party. The third party is not bound by our contract with X. Therefore if X brings explosives in, no matter what contract we may have with him, if through our negligence damage is caused, then the third party has recourse against the board and we cannot prevent it.

Mr. BRISSET: May we make some recommendation here?

Mr. HABEL: No.

Mr. GREEN: Did Mr. Brisset have something?

The CHAIRMAN: Ask him a question.

Mr. GREEN: Were you raising any question?

Mr. HABEL: No, he was raising an objection.

Mr. BRISSET: There were certain recommendations I wanted to make on this.

Mr. LANGLOIS (*Gaspé*): Were they contained in your brief?

Mr. BRISSET: No.

Mr. LANGLOIS (*Gaspé*): You are now adding to your brief?

Mr. BRISSET: Clause 6, subsection (2), which purports to change paragraph (*e*) of subsection (1) of the present Act—

Mr. GREEN: That is the clause regarding dangerous substances.

Mr. BRISSET: —to relieve the board of liability in certain cases.

Mr. GREEN: What did you want to say about that?

Mr. HABEL: This is not in order.

Mr. GREEN: This is not the chairman here. I do not mind rulings from you, Mr. Chairman.

Mr. BRISSET: It is just a short statement.

The CHAIRMAN: Make a short statement and make it at once.

Mr. BRISSET: I want to draw the attention of the committee to the remarks in support of this amendment, in which it is said that the purpose of this amendment briefly, is to relieve the board of liability for the negligence of minor employees. I refer now to the section where it is provided that the board can make regulations, providing "stipulation of the terms and conditions, including any affecting the civil liability of the board in the event of negligence on the part of any officer or employee of the board". We are no longer dealing with minor employees as mentioned in the comment, but we are dealing with officers and employees of the board in general. There is an inconsistency there, and where it is quite important to the shipping interests is in the matter of explosives. I will say that all shipments of explosives are made by a government company—I think it is Canadian Arsenals Limited. What is sought by the board to obtain is a complete relief of liability whereby if anything happens the liability will rest on the carrier that is handling the explosives. We think this is quite an unfair position and quite contrary to what the position is in the United Kingdom, where in the case of shipments of explosives the government assumes liability for all negligence, even of the carrier, because it is realized that tremendous risks are incurred and you could not ask a private carrier to assume these risks. That is why in the United Kingdom they relieve the carrier of the liability. That is what is sought to be obtained here.

Mr. GREEN: Which portion of the clause is it to which you object?

Mr. BRISSET: That would be the end of subsection (*e*) in that section 2, which says:

> The stipulation of the terms and conditions (including any affecting the civil liability of the board in the event of negligence on the part of any officer or employee of the board).

That is a very wide stipulation to relieve oneself of all liability in respect of negligence.

Mr. LANGLOIS (*Gaspé*): That is subject to the by-laws being approved by the Governor in Council. Then it becomes a question of government policy.

Mr. BRISSET: I quite agree that we have this protective measure that the Governor in Council still has to approve of them, but the regulations are going to be—

Mr. LANGLOIS (*Gaspé*): I think that Mr. Brisset should point out that we have given the understanding to the Shipping Federation that those by-laws will be submitted to the interested parties before they are finally approved.

Mr. BRISSET: We are in the process of discussing these regulations, I must admit, with the government.

Mr. GREEN: That is no reason why the provision should be written into the law.

Mr. LANGLOIS (*Gaspé*): We say that we can do that now, but we still want to clarify it. We are just asking to be able to do what a private operator can do. A private operator is free to do this, if he wants to.

Mr. GREEN: What is the situation with regard to a privately owned dock?

Mr. BRISSET: In the case of a privately owned dock, the normal situation will be that whoever is at fault will bear his responsibility, and the owner of the private dock will not be liable for the negligence of somebody else. That is the normal law of the land; each one has to pay for his own negligence.

Mr. GREEN: You are asking that it be the same with the government?

Mr. BRISSET: Yes, we are asking that it be the same with the government. But I have to make this qualification, especially with respect to the shipment of explosives, because all ammunition is shipped by the government. If the carrier has to assume all the liabilities, then the government will not find any carrier to ship its ammunition, let us say, to Korea or wherever our forces are posted.

Mr. LANGLOIS (*Gaspé*): We can always change the bylaw.

Mr. GREEN: Have there been any cases of this kind?

Mr. BRISSET: We are presently negotiating with the department, and we have made representations to try to bring the practice of the Canadian government into line with that of the British government. Whether or not we will succeed, I do not know; but the board is now incorporating into the Act a specific provision that is very wide and which gives them the right to waive any liability, even for the negligence—not only of a minor employee, to the extent as mentioned in the text, but also for any negligence of an officer or any employee.

Mr. LANGLOIS (*Gaspé*): You must admit that it has always been the practice of the board to submit these bylaws to the interested parties.

Mr. BRISSET: Yes.

Mr. GREEN: I could not hear you.

Mr. LANGLOIS (*Gaspé*): I said that it has always been the practice to submit these bylaws to the interested parties before they are submitted to the governor in council; and he said "yes", in answer.

Mr. BRISSET: Now it is the practice to move these explosives on permit and the permit sets out the conditions. Among them the board declines liability for any damage, and the carrier has to assume that liability.

Mr. WINCH: Mr. Chairman, can we call it 6 o'clock?

The CHAIRMAN: 8 o'clock.

Mr. GREEN: I think we had better meet tomorrow, Mr. Chairman.

Mr. CAVERS: There are already a number of committees meeting tomorrow, Mr. Chairman.

Mr. LANGLOIS (*Gaspé*): Since we have lost so much time with two votes this afternoon and with the vote on Wednesday, I think we ought to sit tonight.

The CHAIRMAN: Very well. We are now adjourned until 8 o'clock tonight.

EVENING SESSION

The CHAIRMAN: Gentlemen, we have a quorum. We are on clause 6. Carried?

Mr. BELL: I would like to ask Mr. Brisset one question about this section. We were saying that the harbours board contracted itself out of liability and that sort of thing. I am just wondering if you would care to express an opinion whether there might be a general slackening of restrictions and liability in the harbours where the board can pass their liability to somebody else. To put that in another way, the harbours board now have certain liabilities in connection with explosives in our harbours. If they are allowed to contract themselves out of that liability in varying degrees, do you think that generally

speaking there might be a lessening of the responsibility for explosives in our harbours? The harbours board is one of the few groups we have that are watching things, and I want to feel certain in my mind that everybody is satisfied that the watching of explosives will be carried on at least as well as it was before. Would you care to express an opinion on what you think the effect will be of this change?

Mr. BRISSET: The effect and the implication of this power sought by the board might be to lessen the precautions taken by carriers transporting explosives. If I might explain this a little more, I will give an illustration. First of all, the board under the present Act, section 3, subsection (3), has the power to contract. This is an unlimited power. It gives the board a power also to limit its liability because you can do that in any contract. An individual can do it. What is sought now is, instead of doing it by contract, to do it by regulations and by way of an order in Council. It is somewhat of a dictatorial power that the board is seeking, and what will happen is this. The Governor in Council will pass a regulation stating that in the case of carriage of explosives or shipment of explosives the board will not assume any liability, even for its own negligence, and will seek from the carrier an indemnity whereby the carrier will have to hold the board against any claim that might be made by a third party. You might have a serious disaster like an explosion in a harbour, causing damage not only to harbours board property but also to third parties in the vicinity. The carriers by water, if they are faced with such a regulation, will say to the Canadian government when the Canadian government wants to ship explosives, "We will not do it unless you, the Canadian government, give us in turn an indemnity whereby if we have to pay damages or pay for injury done to harbours board property you will indemnify us." That is the present situation, and that is what we are trying to get from the government. Whether we will get it or not, I do not know. Supposing that we do no get it, then no responsible carrier, no well-established firm, will want to carry explosives for the government. What will happen? The government may find somebody willing to carry them under these conditions, but what they will likely find is some owner with only one ship and no asset except his vessel, who will be willing to take the chance because he knows that if there is a disaster the ship will be gone anyway and the government or the board can run after him. But these ships are not operated under the same standards as ships operated by well-established lines, and that is the danger that has to be considered, if that is done by regulation.

Mr. LANGLOIS (*Gaspé*): These regulations are merely a reflection of the contracts between the users of the board's property and the board itself.

Mr. BRISSET: The regulations are general in application. The board will adopt a regulation which will bind everyone concerned.

Mr. LANGLOIS (*Gaspé*): Is it not a fact, Mr. Brisset, so far your principals have been satisfied with the way that we have been handling that, in seeking their views on any proposed by-laws concerning the transportation, handling and storage of dangerous goods?

Mr. BRISSET: We will say that generally we have been satisfied, and we see no necessity—and that is the very point—for inserting this very serious provision in the Act. So far it has worked satisfactorily and can work satisfactorily, and there is no reason to make a very stringent provision in the Act. We are again in the same position under section 16. It has worked perfectly so far and there is no reason to change it.

Mr. LANGLOIS (*Gaspé*): Is it not a fact, Mr. Bisset, that any volume of explosives to be transported by or for or on account of the government will be done by National Defence in naval ships and, therefore, this carriage has nothing to do with the present Act?

Mr. BRISSET: No, I am not in a position to speak of naval vessels.

Mr. LANGLOIS (*Gaspé*): It is a fact, though.

Mr. BRISSET: There are many shipments abroad to Canadian troops that are carried by commercial vessels. Shipment is being made by Canadian Arsenals Limited, which is a government subsidiary, I understand.

Mr. LANGLOIS (*Gaspé*): Gentlemen, I wish also to inform the committee that at present there is going on a complete revision of regulations concerning the transportation of explosives and all matters of a like kind by an inter-departmental committee composed of representatives of the National Research Council, the Board of Transport Commissioners, the bureau of explosives, the steamship inspection branch of the Department of Transport, the inspection division of that department and the National Harbours Board. I wish also to remind the committee that this afternoon towards the latter stages of our proceedings, Mr. Brisset admitted that it had been the practice of the board so far—and there is no intention of discontinuing this practice—before the regulations are made in which his principals might be interested, to submit those by-laws to them and discuss them and obtain their views about them. He also added that so far this procedure had been very satisfactory.

Mr. GREEN: What would be the position if those words in brackets were taken out?

Mr. LANGLOIS (*Gaspé*): Which words are those?

Mr. GREEN: "including any affecting the civil liability of the board in the event of negligence on the part of any officer or employee of the board".

Mr. LANGLOIS (*Gaspé*): Mr. Finlay will deal with this point, if you do not mind.

Mr. FINLAY: The explanation for inserting those words is simply to place beyond doubt what we already believe to be the board's position in that regard. If we are mistaken, that is, if in fact the board is not at the moment in the position to contract itself out of liability for negligence, then definitely we wish that power. We simply wish to place ourselves in the same position as any private operator. Of course, counsel for the federation is primarily interested, naturally, in the movement of explosives. I would point out that this is not directed particularly toward explosives. This may, as a matter of fact, be the kind of thing that is more likely to be covered: that is, the situation which I mentioned this afternoon where we have a certain form of storage at Saint John and where we consider we should not accept perishable goods for low charges, and at the same time accept any risk.

It may be asked why we need to put this power in the Act. Again the answer is simply that we wish to be in the same position as any private operator. He needs no statutory authority to do so.

Mr. LANGLOIS (*Gaspé*): On the other hand, I understand that you presently are making regulations concerning the handling of explosives. Could you not, under these powers, make regulations which will in some way relieve the board from any responsibility?

Mr. FINLAY: Yes, that would certainly be possible. That would relieve the board from responsibility of the carrier of those explosives.

Mr. LANGLOIS (*Gaspé*): Such regulations are in force now.

Mr. FINLAY: Yes, we, in fact, have such regulations As a mater of fact, one of the conditions with regard to explosives in the regulations is that any carrier who brings explosives into one of our harbours does so completely at his own risk. In other words, we are, in fact, already operating on this basis and the only reason for the proposed amendment is to place beyond all question our capacity to do so, in the same manner as any private operator may refuse to accept explosives on his property without a complete safeguard from the party who wishes to bring them in.

The possible difficulty, however, is this: under another section of the existing Act there is the ordinary statutory provision common in the case of crown corporations that the board shall be liable for the negligence of its employees and so on. That is a statutory provision, and there is just a possibility—or we feel there is a possibility—in view of that existing statutory provision in the Act, that it could be contended that there is no power in the governor in council to make a by-law stating that under any circumstances whatever the board shall not be liable for negligence. It would remove that doubt or that possibility. That is what we are seeking here. In fact, what we are attempting to do is to place ourselves in the same position that any private operator already is in. There is nothing to prevent any private operator from doing that at any time.

Mr. LANGLOIS (*Gaspé*): I would like to quote one of the regulations by the National Harbours Board under part A I. It is regulation No. 71 and it reads as follows:

> 71. Board Permission for Vessels.—No vessel having explosives on board shall enter, move within or depart from the harbour save with prior board permission and upon such conditions (including any respecting liability) as may be imposed by the Board, . . .

So we are doing it right now. That is a regulation which is in force at the present time.

Mr. GREEN: Did I understand that this particular provision is not meant to apply to the handling of explosives?

Mr. FINLAY: No, I did not say that. I said that it was not directed primarily against explosives. It was designed to cover any general cases where it is not felt that the revenue justifies the risk. Now, as a matter of fact, explosives are at the moment one example; but it may very well be, as the parliamentary assistant has explained, that after this interdepartmental committee has completed its study of the matter they presumably will make certain recommendations as to what policy should be adopted with regard to explosives. When that is done, whatever policy is adopted by the government in that regard will certainly apply to the National Harbours Board and the governor in council may make bylaws and we will naturally fall in line with whatever the government policy may be. Now I am speaking of explosives but that actually was not the prime intent of putting this provision in.

Mr. GREEN: You intended to cover explosives by the next subsection?

Mr. FINLAY: Well, the purpose of that subsection, if I may say so at this time—I mean to say that under another section of the existing Act it is provided that nothing in this Act shall give the board any jurisdiction whatever over private property unless the Act specifically provides it. Now, it is felt that we should have some jurisdiction even over private property in so far as explosives are concerned. That is, the purpose of "(ea)" is, to overcome the obstacle which would otherwise exist with regard to private property. That is the purpose of it.

Mr. BELL: I would like to be satisfied on one thing. Under the Act, the way it is, there is a certain liability on the National Harbours Board mainly due, I suppose, to their selfish interest to supervise the harbour, and explosives, and ships generally. I want to feel certain that this will not change, that is to say, that this proposal will not in any way change the duties of supervision on behalf of the board.

Mr. FINLAY: The only answer I can make is that for obvious reasons, regardless of the contractual basis we may have with some steamship lines, the port authority must certainly continue to exercise the same supervision that it always has exercised. No port authority can afford to sit by and see

the city of Montreal, Halifax or Quebec go up in flames merely because they happened to have some contract with a steamship line. That cannot possibly affect the supervisory activity of the board in that respect. From the standpoint of pure selfinterest, the port authority cannot afford to let that kind of thing happen.

The CHAIRMAN: Shall clause 6 carry?

Mr. GREEN: No. In a later subsection of clause 6, the new subsection 3, you use the word "or any province". Is this a new provision to make this bill extend or become applicable against any province?

Mr. LANGLOIS (*Gaspé*): Yes.

Mr. GREEN: Can you explain the reason for that provision?

Mr. FINLAY: The only purpose—actually, I would say it is not a very important provision from our standpoint—but the only contingency there is that you could have a situation—as a matter of fact I do not know that it exists at the moment—but you could have a situation where a provincial government owned vessels and those vessels might be entering a port where we would want to make them subject to various harbour charges and so on. At the present time, in the absence of any reference to the Crown in the statute, we could not make our bylaws binding upon those vessels because an Act does not bind the crown in the absence of an express reference. That is the only purpose of it. I should say, however, that I do not know of any provincially owned ships at the moment.

Mr. LANGLOIS (*Gaspé*): I can give you an example of that. In the province of Quebec the provincial government owns firefighting ships for forest protection, operating on the north shore of the St. Lawrence; I think they have two of them; and they also operate some fishing trawlers, experimental vessels, which make use of the harbour in Quebec.

Mr. FINLAY: That would be an example of that kind of thing, yes. The only purpose is to enable the board to impose charges and so on upon provincially owned ships, upon ships owned by the provincial government.

Mr. GREEN: Then would that go so far as to give the right to seize provincially owned ships?

Mr. FINLAY: No, because there is nothing in the Act. The seizure section of the Act does not refer to the Crown and it is the Act which deals with seizures. It would be a bylaw which may be made binding on Her Majesty in the right of Canada or any province. As a matter of fact, it was for that very reason—or rather for that general category of reason—that the Act as a whole was not made binding upon the Crown but it is considered desirable that in certain cases a bylaw should be binding upon the Crown and the kind of thing we had in mind was the imposition of charges or in some cases the imposition of harbour regulations which would perhaps be a better example.

Mr. HAHN: Would this apply in cases set up under Act of parliament?

Mr. LANGLOIS (*Gaspé*): No, only the National Harbours Board Act and for those harbours mentioned in the appendix.

The CHAIRMAN: Clause 6. Carried.
Clause 7.

7. Subsections (1) and (2) of section 15 of the said Act are repealed and the following substituted therefor:

> 15. (1) The Board may, with the approval of the Minister, commute, *reduce or waive* any tolls fixed by by-law on such terms and conditions as the Board deems expedient.
>
> (2) The tolls imposed *by by-law* upon any goods may, *unless the by-law otherwise provides, be recovered by the Board as a debt due by*

the owner of such goods, and no goods shall be removed from any harbour *or any other property under the administration of the Board* until all tolls imposed upon such goods have been paid *or security for payment accepted by the Board.*

Mr. GREEN: There we have: "The tolls imposed by bylaw upon any goods may, unless the bylaw otherwise provides, be recovered by the board as a debt due by the owner of such goods, and no goods shall be removed from any harbour or any other property under the administration of the board until all tolls imposed upon such goods have been paid or security for payment accepted by the board."

Mr. HABEL: That is right.

Mr. GREEN: Does that give you the right to collect any of these charges levied against goods from either the actual owner or the agent or sender, the consignee, bailee or carrier of the goods?

Mr. LANGLOIS (*Gaspé*): You are dealing with subclause 2 because subclause 1 is a waiver.

Mr. GREEN: Yes.

Mr. FINLAY: In that respect we are simply repeating the existing subclause 2 of clause 15 in that particular regard. If you note, it reads:

(2) The rates and tolls on goods landed or transshipped in or shipped from any harbour under the jurisdiction of the Board shall be paid by the consignee, shipper, owner or agent of such goods, and goods shall not be removed from the harbour until such rates or tolls are fully paid or security for payment accepted by the Board.

That is the existing provision.

Mr. GREEN: But are you not adding the right to collect those tolls on goods from the carrier and bailee?

Mr. FINLAY: Oh no! As far as the bailee is concerned, that power always existed under clause 13. As I explained, we did desire to place beyond doubt our power to charge the carrier, not necessarily on goods. We have always had the power to impose charges on goods and if the charge were imposed in respect of the goods it was imposed on the carrier, but it might not be desired that they be imposed in respect of goods, but perhaps in respect of the carrier's use of our railway facilities.

Mr. LANGLOIS (*Gaspé*): I think you should also mention, Mr. Finlay, that any bylaw mentioned in subcaluse 2—and any other bylaw issued by the board, has to be submitted to the governor in council for approval.

The CHAIRMAN: Does clause 7 carry? Carried.

Clause 8.

8. Section 15 of the said Act is repealed and the following substituted therefor:

16. (1) The Board may as *provided in section 18,* seize any vessel within the territorial waters of Canada in any case where, *in the opinion of the board,*

(*a*) any amount is owing to the Board in respect of such vessel for tolls;

(*b*) property under the administration of the Board has been damaged through the fault or negligence of the owner of the vessel or a member of the crew thereof acting in the course of his employment or under the orders of a superior officer;

(c) obstruction has been made or offered in respect of the performance of any duty or function of the Board or its officers or employees through the fault or negligence of the owner of the vessel or of

a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been sustained by the Board;

(*d*) the owner of the vessel has committed an offence under this Act or the by-laws, punishable upon summary conviction by a penalty payable under section 21 to the Board;

(*e*) judgment against the vessel or the owner thereof has been obtained in any case described in paragraph (*a*), (*b*) or (c); or

(*f*) conviction of the owner of the vessel has been obtained, in any case described in paragraph (*d*), and a penalty imposed payable under section 21 to the Board.

(2) In *any* case described in paragraph (*a*), (*b*), (c) or (*d*) of subsection (1) the Board may detain any vessel seized pursuant to subsection (1) until the amount owing to the Board has been *received* by it or, if liability is denied, until security *satisfactory to the Board has been deposited* with it.

(3) In any case described in paragraph (*e*) or (*f*) of subsection (1), the Board may detain the vessel until the amount owing to the Board has been paid and, in any such case, if the amount so owing is not paid within thirty days after the date of the judgment of the conviction the Board may apply to any court of competent jurisdiction for an order authorizing the sale of the vessel, and upon the making of the order the Board may sell the vessel upon such terms and conditions and for such price as to the Board seems proper, and to the extent that the amount realized from the sale exceeds the amount owing to the Board together with all expenses incurred by the Board in connection with the sale, the Board shall remit the amount so realized to the former owner of the vessel.

(4) In any case mentioned in subsection (1), whether or not the vessel has actually been seized or detained, the Board has at all times a lien upon the vessel and upon the proceeds of any sale or other disposition thereof for the amount owing to the Board, which lien has priority over all other rights, interests, claims and demands whatsoever, excepting only claims for wages of seamen under the *Canada Shipping Act*.

(5) The rights of the Board under subsections (2), (3) and (4) are exercisable by the Board whether or not title to or possession of the vessel is, at the time of the exercise of any such right, in the same person as the person who held such title or possession at the time when, in the opinion of the Board, the amount owing to the Board first became due.

(6) For the purposes of subsections (2), (4) and (5), the amount owing to the Board in respect of any case described in paragraph (*a*), (*b*), (*c*) or (*d*) of subsection (1) is the amount fixed by the Board as owing to it together with all expenses incurred by the Board in searching for, following, seizing and detaining the vessel, and for the purposes of subsections (3), (4) and (5) the amount owing to the Board in respect of any case described in paragraph (*e*) or (*f*) of subsection (1) is the amount of the judgment and costs, or the amount of the penalty incurred and costs, as the case may be, together with all expenses incurred by the Board in searching for, following, seizing and detaining the vessel.

(7) Whether or not all or any of the rights of the Board under this section are exercised by the Board, the Board may, in any case described in subsection (1), proceed against the owner of the vessel

in any court of competent jurisdiction for the amount owing to the Board (or for the balance thereof in the event of any sale contemplated by subsection (3) and may also exercise against the owner of the vessel any other right or remedy available to the Board at law.

Mr. NICHOLSON: What amendments are there? Could we have them?

Mr. LANGLOIS (*Gaspé*): I have suggested an amendment and it is up to the committee to decide. However, as I said on Wednesday when we discussed this particular amendment, I feel that I should warn the committee that in adopting an amendment along those lines we might prejudice the position of the board in future cases. I think a copy of the amendment was given to Mr. Green and I think Mr. Winch has one also. We have an open mind on this subject and perhaps someone would care to move the amendment.

Mr. NICHOLSON: Has it been read yet?

Mr. LANGLOIS (*Gaspé*): Perhaps the Clerk would read it, and then perhaps someone would care to move it.

The CLERK: The proposed amendment is:

That clause 8 of Bill No. 421 (An Act to amend the National Harbours Board Act, be amended by the deletion of paragraphs (*b*) and

(*c*) of subsection 1 of the proposed section 16 and their replacement by the following:

(*b*) Property under the administration of the board has been damaged by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of his superior officers.

(*c*) Obstruction to the performance of any duty or function of the board or its officers or employees has been made or offered by the vessel or through the fault or negligence of a member of the crew thereof acting in the course of his employment or under the orders of a superior officer, as a result of which obstruction damage or other loss has been sustained by the board.

Mr. LANGLOIS (*Gaspé*): Does anybody care to move that?

Mr. NICHOLSON: What about subclause (*d*)? The point I raised on Wednesday was never quite cleared up to my satisfaction. I referred to the *Begonia* owned by the Stag Steamship Line sailing out of Port Churchill. I think it was Mr. Finlay who referred to a file being started by the agent. Assuming that the Montreal Shipping Company is the agent—at least they told the Stag Steamship company they were the agent and the dealings were with the Montreal Shipping Company. Assuming for the sake of argument that a truck belonging to the Montreal Shipping Company sets fire to harbour board property at Churchill would the Stag Steamship Company, the owner of the ship, be liable for the damage done in view of the fact that in clause 1 the owner is set out—it sets out the agent and the charterer. If there is damage done by the Montreal Shipping Company, does that make the owner of the ship liable since the owner of the vessel has committed an offence under this Act and the owner is described as the agent?

Mr. FINLAY: Excuse me but—

Mr. LANGLOIS (*Gaspé*): Were you talking to subclause (*d*)? It has nothing to do with damages but only with violation of a by-law.

Mr. NICHOLSON: It says the owner has committed an offence—

Mr. LANGLOIS (*Gaspé*): That is not damage, that is a violation of a by-law or any disposition of the Act.

Mr. NICHOLSON: At some stage during the discussion—

Mr. LANGLOIS (*Gaspé*): I think your point should be under (*b*) rather that (d). This is penal offence relating to the dispositions of the Act or any of the by-laws made under the Act. The amendment takes care of it anyway.

Mr. NICHOLSON: Is it quite clear to you, Mr. Brisset, that the Montreal Shipping Company would not be at all responsible or the Stag Steamship Company would be responsible for damage which might have occurred at Port Churchill?

Mr. BRISSET: In the illustration the honourable member has just given the ship would not be responsible for damages but the owner of the ship, the vessel owner, under (*d*) would still be responsible. If in setting fire to the harbour installation the agent has breached a by-law—say he has kept gasoline on his premises contrary to the regulations of the board and has incurred a fine of $500—then the board under subclause (*d*) could arrest the vessel to collect that fine because the word "owner", in view of clause one, still includes agent.

Mr. LANGLOIS (*Gaspé*): May I interject? We are dealing with penal law there. Can you pin an offence that was committed by the agent on the owner of the ship?

Mr. BRISSET: That is the very stupidity of this enactment, if I may say so.

Mr. LANGLOIS (*Gaspé*): Answer my question, please.

Mr. BRISSET: Whether we are dealing with penal law or any other law we are faced here by the words: "An offence under the Act."

Mr. LANGLOIS (*Gaspé*): If you can pin on me in any court, Mr. Brisset, a criminal offence committed by my agent you are a good lawyer!

Mr. BRISSET: We are not speaking of a criminal offence.

Mr. LANGLOIS (*Gaspé*): Penal law.

Mr. BRISSET: An offence under the Act might be keeping gasoline—

Mr. GREEN: There is a chairman here and the parliamentary assistant does not happen to be that chairman!

Mr. LANGLOIS: (*Gaspé*): I have just been trying to get a straight answer and it has been impossible to get one so far.

Mr. GREEN: I suggest you do not continue to interrupt the witness.

Mr. LANGLOIS (*Gaspé*): It has been impossible so far to get straight answers. We get runabout answers.

An Hon. MEMBER: We are entirely out of order.

Mr. NICHOLSON: I think we should address the chair, Mr. Chairman. I addressed a question to the witness. It is a relevant question and I think it is only proper that the witness should be permitted to answer because as this wording now stands I would think my friends, the Stag Steamship Company, would be liable for damages for which they should not be liable, and I think we should find some wording which would relieve them of that.

Mr. LANGLOIS (*Gaspé*): This clause has nothing to do with damages caused. It deals only with penal offences.

Mr. HODGSON: On a point of order, the parliamentary assistant asked this witness a question and now he turns around and answers it in his own words.

Mr. HABEL: No, he is trying to get a straightforward answer.

The CHAIRMAN: Order!

Mr. BRISSET: I am sorry for the word I have used. I withdraw it. It was used in the heat of the argument. Under section (*b*) it is quite evident if the amendment that is now before this committee is adopted that the owner of the vessel will not be responsible for damages, but he will be responsible and remain responsible, for any fine, for instance, that might be imposed in the

event of a breach of the voluminous regulations of the board. I have the regulations here. It is a full volume. The regulations provide that if you do such and such a thing which is contrary to the bylaws or regulations you encourage a fine. If you take gasoline on the premises, if you travel on harbour board property exceeding a certain speed, you are liable to a fine.

Mr. LAFONTAINE: What is the amount of the fine?

Mr. BRISSET: I think we were told that the maximum fine was $500. Although Canada will be the only maritime country in the world where an agent will be responsible for the navigation of the vessel, I admit quite frankly that Canada will not be the only country in the world where an owner is responsible for a breach of harbour regulations by an agent. This is quite prevalent in South American countries, for instance, where if an agent breaches a regulation he is under the threat of an arrest. I do not agree with the principle, and I will say quite frankly in these countries that the ship owners in order not to have the vessel arrested will go and see the official concerned and on the table will give him $200 or $500 and get off scot-free. I am sure that the board has no intention of doing the same, but this situation exists in other countries where you can slap a fine across and face arrest conditional to the fine.

Mr. LANGLOIS (*Gaspé*): Supposing I own a car and employ Mr. Brisset as my agent and he drives my car and breaks the speed limit imposed by the government of Ontario. Does he mean to say that he can make me responsible for the payment of this speeding car?

Mr. BRISSET: Not under the present law. There is no criminal law that has such wide provision making the owner responsible for the act of the agent. But we have it here, owner includes agent and therefore if the agent commits the fault or breaches the regulation, the board can go against the owner. I think that the parliamentary assistant has just shown by his words that this is absolutely illogical. Why go to the owner if it is the agent who breaches the regulations.

Mr. LANGLOIS (*Gaspé*): You must not lose sight of the fact that owner here includes the charterer or agent, and the offence may be committed by either three of them, but the offence can be pinned only on the party who commits it; nobody else can be held responsible to pay a fine if he had no part in the committing of the offence. That is elementary in penal law.

Mr. HODGSON: That is not right. The owner of a vehicle in the province of Ontario is responsible no matter who is driving the car.

Mr. LANGLOIS (*Gaspé*): Not for speeding fines.

Mr. HODGSON: If he has an accident. If there is an accident then the owner is responsible.

Mr. LANGLOIS (*Gaspé*): I do not think that we have to elaborate on this point any further. As I said a while ago if I own a car and that car is being used by my agent, Mr. Brisset, and he commits manslaughter while driving my car, do not tell me you can pin that manslaughter charge upon myself, it is impossible.

Mr. GREEN: Under this section there is the power in the harbour board to seize the vessel where an agent has broken a bylaw. The vessel itself can be seized and that is what I cannot understand, why you want the power to seize the vessel for a breach of a bylaw by an agent.

Mr. LANGLOIS (*Gaspé*): Would you repeat the answer, Mr. Finlay?

Mr. FINLAY: I can only point out again in that respect that you are dealing with owner in a different section. It is the principle that owner means such and such, but only where the context allows. You cannot make the owner penally liable. The point that was raised (if I may revert to an example given in the Churchill case), in that particular example the question asked

was: whether or not the principal could be held liable for damages. I believe that was the main issue in the mind of the questioner at the time. The answer is that we do not believe that he could be, but in any event there can be no debate about the matter now under the amendment. That has to do with damages; that was the first point. But the subsection with which the committee is now dealing has nothing to do with damages, but with penalties and under another section of the National Harbours Board Act there is reference to the Criminal Code. In other words, you are dealing with criminal offences. Any violation of the Act is punishable upon summary conviction under the Criminal Code, but you cannot pin the criminal offence on a principal. You can make him liable in tort for the acts of his agent, but this is not what the subsection is dealing with.

Mr. GREEN: Does not this provision have the effect of making it possible to seize the owner's vessel for a breach of the bylaw by his agent? I do not see how you can get away from that interpretation.

Mr. LANGLOIS (*Gaspé*): It has this effect to my mind—and counsel for the board will correct me if I am wrong—if the offence is committed by the owner of the vessel, but not when the offence is committed by the charterer or the agent excepting the charterer by demise.

Mr. NICHOLSON: I think Mr. Finlay makes it clear that the National Harbour Board does not want to do what the Act says it can do. "The board may as provided in section 18 seize any vessel in the territorial waters of Canada in any case where in the opinion of the board". We have made our amendment. Coming to (d) "The board may seize the vessel if the owner of the vessel has committed an offence under this Act or the bylaws, punishable upon summary conviction by penalty payable under section 21 to the board". Our first clause defines what "owner" is and as I understand it the ship belonging to the Stag Steamship Lines could be seized if the owner or the agent, Montreal Shipping Company, has committed an offence. If that is the case I think our language should be changed to make it very clear that the Montreal Shipping Company is not responsible for damages caused by the Stag Steamship Company and vice versa the Stag Steamship Company is not responsible for damages caused by the Montreal Shipping Company for which the Montreal Shipping Company should be responsible. I think it is a matter of draftmanship and we want to get this worded so there will be no doubt about it. As it now stands the Montreal Shipping Company or the Stag Steamship Company could be held responsible for offences committed by the other party for which they had not been responsible.

Mr. LANGLOIS (*Gaspé*): Mr. Chairman, in respect to this I have to state again that we feel that this section does not give the right to the board to seize the ship when a violation of the bylaws or any provision of the Act has been committed by the agent; but, if it will make the committee any happier about it I am ready to suggest what was suggested again this afternoon, that, after the word "has" in the first line of subsection 1 (d) we add "in respect of the vessel". It does not change the meaning but if it makes anybody any happier we are ready to make the amendment.

Mr. HOSKING: I do not know whether we would want to agree to that.

Mr. LANGLOIS (*Gaspé*): It does not change anything.

Mr. HOSKING: Suppose that we have a foreign shipping company with a boat in the harbour and they hire some disreputable agent to take care of their business. Would not the good solid business people that are in business want to put a sense of responsibility on to the owner of the ship, that he must deal with a reliable company, and would not this be a good thing for a reliable businessman carrying on a legitimate business, who is willing to accept the responsibilities he gets into? If he is the agent of the shipping company that

owns the ship, while that ship is in harbour, and he is doing a job and does something wrong, have not the shipping company some responsibility in regard to seeing that that is paid? If they hire some disreputable person who has no equity in the company, and he says, "You cannot take it out of me", you will have a sloppy business. The person who is responsible is the shipping company that has the ship there and is asking its agent to do some work on it. I think it is a sensible law. It is the same kind of law that you had with the trucking companies. The owner of the truck is certainly responsible if his agent does some damage, and it is the same if the shipping company agent does some damage. I think it should be in there just the way it is.

Mr. LANGLOIS (*Gaspé*): It is not a question of damage.

Mr. GREEN: It is a question of infringement of a by-law.

Mr. LANGLOIS (*Gaspé*): It is a question of fines.

Mr. GREEN: As a matter of fact, nobody needs to have been convicted. It is worded so widely that if the board thinks there has been a breach of the by-law, then the ship can be seized. There need not have been any conviction at all. If you read it, it says that the board may seize a vessel if, in the opinion of the board the owner has committed an offence under this Act or the by-laws, punishable upon summary conviction by a penalty payable under section 21 to the board. All that the board needs to do is be of the opinion that A, B or C has committed an offence. They do not have to prove that he has committed it. If they merely think that the owner or the agent or the charterer or the master has broken a by-law, then they can seize a ship. That is the ridiculous part of it. They do not even have to convict the man. The ship can be seized without anyone being proved to have broken the law.

Mr. HOSKING: May I ask you a question? How would you like it if the harbour commission seized my ship and I was guilty of no offence, nobody was guilty of any offence, but in their opinion something was wrong and they seized my ship, and it cost me $10,000 or $15,000? How would you like to act as my lawyer in a case against the board for damages? If nobody is guilty, then their opinion is wrong, and they have to pay for their opinion being wrong.

Mr. GREEN: No, this is worded so widely that if in the opinion of the board a by-law has been broken, then under this section they can seize the ship, and, of course, you have put your finger on the point that hurts, in that every day the ship is held up means thousands of dollars.

Mr. HOSKING: Do you mean to say that if they held me up for nothing at all I could not take it to court? Is that correct, Mr. Finlay?

Mr. FINLAY: No. It is perfectly true that it says "in the opinion of the board", but there, again, I believe the barristers on the committee would agree with me that that must be a reasonable opinion. That is, the board cannot arbitrarily take such action and then escape responsibility. What it means is that there must be a prima facie case. It is impossible to wait until we get judgment of the courts in these seizure cases. If we waited for that we would never seize a vessel. We must be able to act on what we consider to be a reasonable case. But supposing at a later date the court says that there was not a prima facie case, I presume that in that event the board would be responsible.

Mr. GREEN: This particular subsection deals with the breach of a by-law.

Mr. HOSKING: Then somebody is guilty.

Mr. GREEN: The maximum penalty is $500, but you have the Act so drawn that you can collect that penalty from the owner of the ship or the charterer or the agent or the master of the ship.

Mr. HOSKING: It just says "seize the vessel".

Mr. GREEN: Or the local agent of the vessel. You have all those people on the hook. Yet in addition to that power to collect that penalty from these different individuals, you are asking that you should also have the right to seize the ship, which means that the amount of that penalty, $500, will be lost many times over when the ship is delayed.

Mr. HOSKING: My question is not as stated by Mr. Green, but it says here that the only recourse against the owner of the vessel is to seize his ship; it does not say he has to pay the fine. If they seize the ship and he is not guilty, they could be sued and the harbours board would have to pay.

Mr. LANGLOIS (*Gaspé*): May I add something which might clarify the situation, I hope. I must first inform the committee that in England the ship is liable to seizure under the Harbour Docks and Piers Act, even for tolls owing on goods. Here, while I do not agree with the suggestion made in the remarks by Mr. Green, if this can clarify the situation, could we not add after the word "as", in the first line, "in respect of the vessel". Then we are completely in the clear and we have the exact meaning that the board is putting as an interpretation on this section. I think that that clears the situation completely, "in respect of the vessel".

Mr. DUMAS: I so move.

Mr. LANGLOIS (*Gaspé*): I hope that clears that up completely.

Mr. GREEN: Is the board insisting on the right to seize the ship for a possible—not a proven but a possible—breach of a by-law?

Mr. LANGLOIS (*Gaspé*): No, no. It would clear it up in respect of the vessel.

Mr. GREEN: But the agent would still be liable?

Mr. LANGLOIS (*Gaspé*): The violation must have been caused in respect to the operation of the vessel.

Mr. GREEN: Then why do you need this subsection "d" in there at all? This is the seizure section, the section permitting the Harbour Board to seize the ship; why do you need to have the right of seizure when you think there has been a bylaw broken? You have got the right to seize where there has been a judgment against the owner in the next subsection "e", so why do you ask for the right to seize the ship when possibly the fine could not amount to more than $500?

Mr. LANGLOIS (*Gaspé*): You mentioned subsection "e"; it does not cover subsection "d", you have noticed that? Subsection "e" refers to any case described in paragraphs (a), (b) and (c), but not (d). You must notice that, because you referred to (d).

Mr. GREEN: Under (f) you would have the right to seize where there has been a conviction for breaking a bylaw; but "d" gives you the further right to seize where you only think there has been a breach of the bylaw, before you have proved anything about it at all.

Mr. FINLAY: In that regard I could give a very good example of the kind of thing which may arise. In Quebec harbour there was a small vessel; as a matter of fact, it is worth very little from the standpoint of sales value; but in that instance she was tied up at a certain dock and the master and crew of the vessel disappeared and there was nobody there. The only party or person available, or the only person known to us, was the agent. And in that instance we were not even able to reach the agent. The result was that a liner was held up for several hours with 1,200 passengers, attempting to get into that dock. One of the most important factors here would be that we could seize such a vessel. The vessel herself was worth very little, and the

penalty there was only $500, and it would not be worth seizing the vessel necessarily to recover $500, but it would be very well worth seizing her for one thing: to take possession of her and to move her; and in that case a liner was held up for several hours.

Mr. GREEN: Have you not got the power now under your Act to move a vessel from one spot to another in your docks?

Mr. FINLAY: We have the power to give orders, but here there was nobody to give the orders to.

Mr. GREEN: You have the power right now since you control the harbours, to put a boat in a dock and move a boat from one spot in the dock to another.

Mr. FINLAY: That may conceivably be the position, but I doubt if there might not be some question whether we could do it. At any rate, this would place the thing beyond any debate. Actually, the amount itself is very small. Unless the ship were a very small craft, it would be unlikely, and I cannot imagine any seizure of a vessel for $500 unless it was a very small craft indeed. But in the example cited by the parliamentary assistant, there is legislation which is far more drastic than this, which exists in England and has existed there for at least half a century and that is, as he mentioned, the Harbours Docks and Piers Act.

In that instance you may seize a vessel for tolls not incurred by the vessel but for tolls imposed by the harbour authorities upon goods carried in that vessel. Let us suppose a shipper has failed to pay those charges. The goods are on board the vessel. The port authority has complete power to seize that vessel for those charges.

Now, as I say, we are not asking for that kind of power here but it is an example and I mention it because of the great emphasis laid from time to time on the very arbitrary powers that the Harbour Board is attempting to obtain and because of the fact that there are these precedents at least in the British world. There is an example, and, as a matter of fact, it is wider than anything we seek to attain, and it has been in force for at least 75 years in Great Britain.

Mr. GREEN: But we have no way of checking on it at the moment. There are only seven ports in Canada which are being made subject to these drastic restrictions. There are other ports in Canada with which we are in competition. For instance, the port of Vancouver is in competition and very serious competition with the port of New Westminster, yet, while the port of Vancouver will be made subject to these restrictions, they will not apply to the other port. Here you have a case where you yourself admitted that you would not seize a vessel for only $500, yet you are asking for the power to do it under this very section.

Mr. LANGLOIS (*Gaspé*): This is the maximum.

Mr. GREEN: Mr. Finlay said they would not think of seizing a ship for $500. So why do you ask for the power to do it?

Mr. LANGLOIS (*Gaspé*): He gave the committee an example, when wanted to move a ship to make room for a much larger ship. I doubt very much myself if the board has the power to take over a vessel and to shift it from its berth. They do have the power to order the vessel into a berth, but I do not think they could go and take over the vessel and move it from there.

Mr. GREEN: You must have. Surely if an owner comes in with his vessel and ties it up at one of your docks in the wrong place without any authority, surely you can make him move it? You would not have to wait until the Harbour Board at Ottawa decided that he has broken the by-law and decided that you can seize the ship. What right have you to move the ship after you have seized it?

Mr. LANGLOIS (*Gaspé*): Where you would find the right to take over the vessel in such an instance? I do not see it.

Mr. GREEN: From the very fact of controlling your harbour. I am sure if a ship came into our port and docked at the wrong dock, or went into the wrong berth, it would be moved, and moved out very fast.

Mr. HOSKING: If there is no crew on it, and if you have an irresponsible ship and an irresponsible agent, there is nobody to deal with. That is why the clause should be left in. That would be the best example you could possibly imagine, where you have an irresponsible ship and an irresponsible agent and there is nobody to deal with.

Mr. NICHOLSON: I do not object to provision made to seize the ship under those circumstances, but I do not think that we have any business to fine both the agent and the owner for offences that the other party might commit. My honourable friend thinks that there are a lot of agents in the country who are probably not very dependable. Perhaps there are but I think that the agent should be held responsible for the offences of the agent and made to pay for them. I think that most Canadian agents would be in that position; and likewise, I think that the owner should be held responsible for the mistakes and offences of the owner. But as it is presently worded in "d", the owner can be held responsible for the offences of the other. I think it is unfortunate to have that sort of language in a bill going through parliament.

Mr. LANGLOIS (*Gaspé*): Would you not be satisfied with this wording after "has" in the first line, "the owner of the vessel has in respect of the vessel committed an offence under this Act" and so on. I think that would meet your point, Mr. Nicholson.

Mr. WINCH: Has anybody moved it?

Mr. LANGLOIS (*Gaspé*): No. We have two amendments. Would somebody care to move the other one first?

Mr. WINCH: I so move it.

Mr. LANGLOIS (*Gaspé*): Mr. Winch moves it. I think it has been read.

The CLERK OF THE COMMITTEE: Yes, it was read.

Mr. LANGLOIS (*Gaspé*): Shall I state the amendment again, Mr. Chairman. Have we got a seconder?

Mr. HAHN: I second it.

The CHAIRMAN: Does the Committee wish the amendment read again? All those in favour of Mr. Winch's amendment please signify?

Mr. DUMAS: "b" and "c".

The CHAIRMAN: All those in favour please signify?

Carried.

Mr. DUMAS: I move an amendment to clause "d", that "the owner of the vessel has in respect to the vessel committed an offence under this Act or the bylaws punishable upon summary conviction by a penalty payable under section 21 to the board;"

Mr. CARTER: I second it.

The CHAIRMAN: All those in favour?

Mr. LANGLOIS (*Gaspé*): Will the clerk read it?

The CLERK OF THE COMMITTEE: It is moved that Clause 8, subclause 1, paragraph "d" be amended by inserting the words "in respect of a vessel", after the word "has" in the first line of paragraph "d".

The CHAIRMAN: Shall the amendment carry?

Carried.

Does the clause, as amended, carry?

Carried.

Mr. GREEN: I would like to move that the words "in the opinion of the board" in the third line of clause 16 be deleted. They were not in the seizure clause before and that clause read as follows: "The board may, in the manner hereinafter set forth seize and detain any vessel within the limits of the territorial waters of Canada in the following cases:" and I submit that change is not a fair one and that the board should stand on its judgment as either being right or wrong. If it is wrong in making a seizure then it must suffer the consequences. If it is right, of course, it has the power to seize, but this is not in the interests of the vessel owner and if the board does not have the right to seize under any of these subclauses he is protected. This right of seizure is a very drastic one, and I do not think the board is entitled to wider.

Mr. BELL: Mr. Chairman, I would like to ask Mr. Finlay a question on the same point. Supposing a member of a crew of the ship does injury coming off the ship, something like the example you gave before. I understand by the reference in clause 18 of this amendment you would be able to seize the ship and detain it but I also think that with the inclusion of your new definition of "owner" you could hold the agent responsible for all the costs in connection with that. In other words, the agent is responsible for all the costs and damage done by a member of the crew of the ship even though he may be 200 or 300 feet from the ship, is that right?

Mr. FINLAY: Yes, and he always has been. There is no change in that respect. Those are the concluding lines of section 16(2) of the existing Act.

Mr. BELL: That is why you have the reference to section 18 in the amendment? I wanted to know why in section 8 you have "as provided in section 18?"

Mr. FINLAY: Oh, I see. The reason for that is simply the fact that clause 18 is the clause which deals with the procedure for seizure. That is the only purpose of that. "The board may, as provided in clause 18"—and then clause 18 gives the procedure for seizing.

Mr. BELL: It seems pretty far-fetched when a member of a crew of a ship does injury to your property that the agent should be held responsible for all costs of that. I quite understand it might be desirable to hold up the ship and seize it until liability is established against the actual owners of the vessel, but surely that is far-fetched there?

Mr. FINLAY: Now it must be remembered that he must be acting in the course of his employment. Those are the words that appear in the bill. The member of the crew must be acting as such. He must be acting in the course of his employment. Let us suppose he is going off on leave. Well then, it might be that personally he was not acting in the course of his employment at that time, but if he is acting under the orders of his superior officer or acting in the course of his employment, even although he may not actually be on the deck or on the vessel at the time, then the vessel can be seized and the agent can be held responsible. But there is nothing new there; that has always been the situation.

The CHAIRMAN: Carried.

Mr. LANGLOIS (*Gaspé*): There is an amendment by Mr. Green.

The CHAIRMAN: The clerk will read the amendment.

The CLERK: It is moved that clause 8 of Bill 421 be amended where it relates to section 16 subsection (1) of the existing Act, by deleting the words: "In the opinion of the board" which appear at line 26 on page 4 of Bill 421.

The CHAIRMAN: All in favour of the amendment please hold up their right hand.

The CLERK: Seven members in favour.

The CHAIRMAN: Contrary?

The CLERK: Fifteen contrary.

The CHAIRMAN: The amendment is lost.

Clause 8.

Mr. GREEN: There are quite a few more questions on clause 8. Clause (e) of subclause 1—would Mr. Finlay explain how that works. It is restricted to paragraphs (a), (b) or (c) and you have the right to seize under those clauses (a), (b) and (c) and here you take a further right to seize after you have judgment against the vessel or the owners. Why do you need that?

Mr. FINLAY: The explanation there is that we may not have seized before judgment. We may seize after judgment. Now, in view of the amendments made, there can be no doubt about the particular type of cases after which judgment against the vessel can be obtained. Those already have been defined. That is to say, there must have been damage done by the vessel or the crew. Those all have been dealt with by the committee. Then granted one of these cases, (a) (b) or (c) has occurred we may proceed in the courts against the vessel or against her owner and we obtain judgment and then we seize the vessel. The following subclauses of this clause go on to provide that in a case where judgment has been obtained—unlike a case where it has not been obtained—then after a certain lapse of time we may go to the court again, and ask them for permission to sell the vessel. That is in an instance where judgment has been obtained. It is a separate procedure. In a case where judgment has not been obtained, we cannot sell the vessel.

The CHAIRMAN: Carried.

Mr. GREEN: Where you have obtained a judgment, why do you not seize under the judgment? Why do you have to have a right to seize over and above that right which you already have?

Mr. HABEL: Oh, you ought to know that!

Mr. FINLAY: All we are doing is repeating the provisions of the former Act. After all, from the standpoint of the vessel owner it makes little difference whether we proceed under this or that statute having obtained judgment against it.

The CHAIRMAN: Are there any other questions?

Mr. GREEN: Concerning subclause 3, the last line: "The board shall remit the amount so realized to the former owner of the vessel." Now, with your definition of "owner" which includes agent and charterer and so on, how do you decide to whom you are going to pay that balance?

Mr. FINLAY: That, I may say, is exactly the reason why the provision is there. It may or may not be easy for the board to determine—particularly in the case of a foreign vessel—just who is the owner. There may be conflicting claims so far as the ownership of that vessel is concerned. The whole purpose of the section, as far as the board is concerned, is that we will pay it to the owner or the agent. If in fact we pay it to the agent, the owner can always recover that amount from him, but the point is that there is no reason why the board should be necessarily in the position where it must search about to find the actual owner which can be quite a difficult thing to determine under some circumstances. We sell the vessel. Now, we must obtain judgment. We must go before the court in order to sell the vessel in the first place and we get an order from the court authorizing us to sell the vessel. Having done that if there is any balance we remit the proceeds to the owner. That would permit us certainly to remit that balance, let us say, the Canadian agent. There is no denial of that.

Mr. GREEN: Well, surely, surely, whatever other things may be said about the Act and whatever other conditions may arise with regard to the vessel, there can be no doubt that the agent does not own the vessel and yet here you are taking the power—having seized the vessel and sold it you are taking the power to remit any balance not to the owner of the vessel but to the agent and surely that is not right, because he is only the agent for handling the ship when she is in the port and the agent is not entitled under any consideration to get any balance, but you say: Oh well, the ship owner can sue the agent to get the money. Now, where is the fairness in that conduct?

Mr. FINLAY: The only answer I can make there is there will be no necessity for suit, for legal action by the owner of the vessel in such an instance unless the agent is a criminal. After all the situation could arise where after judgment and seizure and sale of the vessel we remit the balance to the Canadian agent—some firm in Canada who was acting as the agent of the vessel—and we tell them, send this to your principal. Unless the agent is a criminal there will hardly be any necessity for litigation by his principal to obtain the money.

Mr. LANGLOIS (*Gaspé*): Also the board takes the necessary precaution before paying the money to the agent to make the cheque jointly payable to the owner, as it was known before the proceedings were instituted, and the agent as well.

Mr. GREEN: What was that again?

Mr. LANGLOIS (*Gaspé*): That is an elementary precaution to take, to make the cheque payable jointly to the owner, as known to them when the proceedings were instituted, and to the agent as well; that would be an elementary precaution that the board would take.

Mr. CAVERS: If there is a balance owing does the agent not hold the moneys as trustee for his principal?

Mr. FINLAY: Yes. That illustrates my point. Unless the agent is a criminal there can be no necessity for any suit by his principal. The agent automatically holds that money in trust for his principal.

Mr. GREEN: In subsection 7 of section 8, as I read the present section 20, subsection 2, the board can only sue for deficiency if they seize and do not get enough. It says: "The board shall pay or deliver the surplus if any, or such of the goods as remain unsold to the person entitled thereto and recover the deficiency if any by action in any court of competent jurisdiction." As I understand this subsection 7 you are changing from the position that you only sue for deficiency to the position that you can sue for the whole claim. Is that right?

Mr. FINLAY: No. Excuse me, what has happened, there is: In the Act as it stands it is provided that we may seize and sell the vessel in the existing Act, in certain circumstances. Now, having sold the vessel naturally there can only be a deficiency. We are going to get something out of the sale of the vessel, and the Act goes on to provide in cases where we have sold the vessel we go after these other parties for the deficiency.

Mr. GREEN: Why do you not say that instead of taking the right to sue for the whole thing regardless of whether or not you seize? You say in the first line: "Whether or not all or any of the rights of the board under this section are exercised by the board, the board may, in any case described in subsection (1), proceed against the owner of the vessel in any court of competent jurisdiction for the amount owing to the board (or for the balance thereof in the event of any sale contemplated by subsection (3)) and may also exercise against the owner of the vessel any other right or remedy available to the board at law." Why do you not restrict this to sue for the balance?

Mr. FINLAY: Excuse me, I did not understand that point before. The answer there is, if you will look at the existing section 16 (2), the first part of that subsection provides for the seizure of the vessel in cases of damage done by the vessel and so on. Then, it goes on to say: "The owner, charterer, master or agent of such vessel is also liable to the board for all such injury, damages, expenses and costs." Now, if the words are to mean anything the word there used is: "all". If that means a deficiency the word "all" would be meaningless. The board is perfectly free to adopt that course under the existing provisions. We do not have to sell the vessel; if we do seize and sell there is of course a balance. If it is not seized and sold we must be free to recover 100 per cent. That is all that is covered there.

Mr. BELL: Mr. Brisset, what were your objections to this sub-section 7?

Mr. BRISSET: My objection to this section I have explained already this afternoon. But, I want to add something here. It is this: that in effect, strange as it may seem, the board is really working against its own interests here. I would like to illustrate this. The section says this:

> Whether or not any or all of the rights of the board under this section are exercised by the board.

And it means whether the board seizes or not the board can sue the agent therefore it follows that their primary recourse will be exercised against the agent. I said the board is working against its own interests because if a ship comes in one of the harbours of Canada and does extensive damage—say we have a ship coming here worth $1 or $2 million, and she does half a million dollars damage to shore installations, we have a provision which authorizes the board to let that vessel go, to let that security which it has in its hands worth $2 million go and pursue the agent.

Mr. HABEL: Do you believe they will do that?

Mr. BISSET: I do not think they will ever do it because they are too clever to do it but if so, why do they seek the power to do it? What will happen in years from now? We might have an official of the board who will decide to proceed against the agent. I have a list of all the agents in Canada. There are about 300 of them of which there are about 150 small agents or individuals which might have a capital $10,000 or $25,000. What is the logic in mind in making the primary recourse of the board against the agent when the board has there in its harbour a ship which is a security worth thousands or millions of dollars—

The CHAIRMAN: Order. You may answer the question and not make a whole story.

Mr. GREEN: On a point of order, Mr. Bell had asked the witness a question. I do not know why you should step in and try to stop him. He is talking right on this point. In this committee or in any other committee we are entitled to have an answer. This business of the government wanting to steamroller all kinds—

Mr. LANGLOIS (*Gaspé*): I take objection to that, Mr. Chairman. On a point of order, I take a very strong objection to what Mr. Green just said and he knows that it is not a fact. I can say this at this time that we have bent over backwards to allow Mr. Brisset and the Shipping Federation to come before this committee and make their representations. As a matter of fact we even suggested they come before the committee. That is far from the steamrolling you are mentioning Mr. Green, after having advised the Shipping Federation that we welcome their presence here. As soon as I got the motion through the House referring the bill to this committee, I asked Mr. Smith to call Mr. Brisset right away and tell him that we had

referred it to this committee, suggesting to him that he send in his request to appear before this committee right away, to Mr. Arsenault, the chief clerk of committees. If that is steamrolling, I do not know what the word means.

Mr. NICOLSON: I think we are getting a little tired, but we appreciate very much the help that Mr. Brisset has been and I think he should be—

Mr. LANGLOIS (*Gaspé*): He is not answering any questions any more, but he is defending the board.

Mr. NICOLSON: Members have asked him to give information, and I think it is most important to take all the time that is necessary to get all the information that they wish to obtain. I do not think that our guest should be embarrassed by any suggestion that we have not plenty of time to hear his statements.

Mr. LANGLOIS (*Gaspé*): He has made his representations. He has been afforded all the time to make them. Now he is bringing up something new. At no stage did he ever discuss this matter that he is raising now with the board, when he had an opportunity to do so. Now he is taking the defence of the board. It is well taken care of by representatives of the board that we have here.

Mr. BELL: I for one certainly appreciate the fact that some person or some body has taken an interest in this very controversial National Harbours Board amendment. I would like further to add that it is a highly technical legal subject and we have to have these independent bodies bringing out these facts and discussing them, otherwise a layman has not a snowball's chance of finding out what they are about. Would you please answer the question?

Mr. LAFONTAINE: What is the question?

Mr. BELL: What his objections were to subsection (7). We are still on it.

Mr. BRISSET: I will not go further in this expose I was giving to the committee to show that the board might proceed against its own interests, but I will repeat that there seems to be no logical reason in law or in justice to make the agent primarily liable for the damage done by the vessel, because the agent, as we explained the other day will not be insured for such a liability. The insurance is carried by the vessel. In marine practice, whenever the ship is seized, there is a whole wheel of operations that comes into play. The companies come forward and give security for the claim. The insurer will say that it is not the ship that is seized. It is the agent, and they do not cover the agent.

Mr. HABEL: Could I ask a question on that point? Would you think for a minute, Mr. Brisset, that the harbours board would willingly try to pin the agent before seizing the boat?

Mr. BRISSET: I hope not, sir. If that is so—

Mr. LANGLOIS (*Gaspé*): Mr. Chairman, on a point or order, I think the witness should stop making speeches. Every question he is asked, he makes a speech on it. He is a witness, and we want concise and precise answers. That is all we want.

Mr. LAFONTAINE: And precise questions.

Mr. BELL: I still have the floor, and I am questioning Mr. Brisset. I would like to ask Mr. Brisset, in view of these restrictions and added liabilities that this Act seems to pass on to ships' agents, generally, what his opinioin is of the effect of these 300-odd agents doing business in Canada and their interest in the shipping business generally. I do not care whether it is a speech or not. I want an opinion on it.

Mr. BRISSET: What is going to happen is, if there is a heavy claim and the agent is sued first, he will go bankrupt. He will be out of business, because he has no means of meeting a claim for heavy damage.

Mr. LANGLOIS (*Gaspé*): May I ask another question?

Mr. BELL: In other words, an outside shipping firm wanting to do business with Canadian ports and the shipping industry generally might not be able to get suitable agents, agents who have the capital to accept this responsibility or who want to accept it. Can you carry it so far?

Mr. BRISSET: Yes, I will carry it so far. Certain agents may not want to accept this responsibility, because they know very well that once the ship has gone and the board has not exercised its right to seize, they will be left, if I may use the expression, "holding the bag". They will not be able themselves to go after the ship in a foreign port.

Mr. LANGLOIS (*Gaspé*): On that point—

Mr. BELL: I still have another question.

Mr. LANGLOIS (*Gaspé*): It is on the very same point.

Mr. BELL: To cover it one step further, are we right in assuming that shipping firms outside of Canada entirely, knowing that agents are not available and not willing to take responsibilities and not able from a financial standpoint, might, where competition is equal, go to other ports where the responsibilities of agents and facilities are of lesser trouble?

Mr. BRISSET: I would answer that by saying that the ship owner himself is not affected by this section, because if he insures harbours board property he knows that possibly the board will exercise recourse not against him but against the agent. But the agent will feel the burden of this additional liability placed upon him, the Canadian agent.

Mr. BELL: Would you say that quite a few of these changes to the National Harbours Board Act are due to the fact that in Canada today we do not have as many owners in the full sense of the word as we had formerly and we have to broaden the Act to cover agents?

Some Hon. MEMBERS: Oh!

Mr. LANGLOIS (*Gaspé*): I object to this question. The witness here is a legal adviser, not a shipping agent, and he is not competent to answer that question.

Mr. BELL: How many owners are there in the full sense of the word in Canada?

Mr. HABEL: The question is out of order, Mr. Chairman. It has nothing to do with the case.

Mr. LANGLOIS (*Gaspé*): He mentioned that there was a possibility of the agent going bankrupt. I am taking the line which was taken this afternoon, that the board has no right to ask for any extra power. Some members said, "You have had the experience of eighteen years without losing any money." Following the same line of reasoning, may I ask Mr. Brisset if he knows, during the forty odd years that this power has been in harbour statutes in Canada, starting with the Harbour Commission of Vancouver in 1913, if he knows of any case where the agent was made bankrupt by the board in this respect?

Mr. BRISSET: No.

Mr. LANGLOIS (*Gaspé*): That is all I want. That is the answer.

Mr. BRISSET: But the question is wrong; it is not based under the Act.

Mr. HABEL: Order.

The CHAIRMAN: Let us have one question at a time. Answer the question and answer it quickly.

Mr. BRISSET: The others are not the same; they do not give the right.

Mr. LANGLOIS *(Gaspé)*: That is not so.

Mr. BRISSET: Therefore they have never sued the agent.

Mr. HAHN: Would you please amplify that word, the last "no"?

Mr. BRISSET: The reason why the agents have not suffered before is because, under the legislation of the other type, that was referred to this afternoon, the results are such that the primary recourse is not made against the agent but against the vessel owner. Therefore they have never sued the agent.

Mr. HABEL: And it is still against the owner?

Mr. BISSET: It is still against the owner. Now they are seeking to sue the agent instead of the owner.

Mr. GREEN: I think these government supporters should keep still.

Mr. LANGLOIS *(Gaspé)*: And I think that the opposition supporters should stop, too.

The CHAIRMAN: Order, gentlemen, order.

Mr. GREEN: They should not be allowed.

Mr. LANGLOIS *(Gaspé)*: The chairman is on his feet.

The CHAIRMAN: You have had quite a time of it asking questions and we have not bothered you any.

Mr. NICHOLSON: May I ask a question which will not be so controversial?

The CHAIRMAN: Certainly.

Mr. NICHOLSON: I wonder if Mr. Brisset could give us any opinion as to what the effect of this legislation will be upon shipping out of Churchill?

Mr. LANGLOIS *(Gaspé)*: He is not a shipping agent.

Mr. NICHOLSON: I think my question is quite in order, Mr. Chairman.

Mr. LANGLOIS *(Gaspé)*: He is a legal adviser.

Mr. HABEL: Ask your question of Mr. Green.

Mr. NICHOLSON: If we are going to have a committee of parliament dealing with this matter, then, Mr. Chairman, I submit that the members should have the privilege of asking the witnesses questions.

The CHAIRMAN: He is a legal man and he is not supposed to know.

Mr. NICHOLSON: I think the witness should have the privilege of answering the question rather than the members of this committee.

The CHAIRMAN: Order, gentlemen.

Mr. NICHOLSON: I think that we should not have to return to the House and report that we are not permitted to ask or have our questions answered. I have asked the witness a question which I think he should be permitted to answer.

The CHAIRMAN: You have not been refused the right to ask any question.

Mr. NICHOLSON: The members are not prepared to give the witness a chance to answer.

The CHAIRMAN: You have not been refused yet, so do not say that.

Mr. HODGSON: You have a group of party members who do not care, and they sit there and yap, yap, and yap and do not say anything except to disturb somebody who is trying to answer a question.

The CHAIRMAN: Are you going to answer Mr. Nicholson's question?

Mr. BRISSET: I have not heard his question. I am sorry.

Mr. NICHOLSON: Last year there were thirty ships which sailed out of Churchill and the Montreal Shipping Company was the agent for nearly all those ships. I am concerned about the passing of this legislation and what

effect it will have on a firm such as the Montreal Shipping Company? Will they run the risk of going so far away as Churchill to take on that responsibility which I think the wording of the legislation will require? It will require either additional insurance or protection, more than they would have at the present time. I wonder if the witness would comment on whether the Montreal Shipping Company would be prepared to go as far away as Churchill to be the agent for some thirty or forty ships this year?

Mr. BRISSET: I am afraid that I am not qualified to answer the question for one particular port except to say that the situation will be the same for all ports. It would affect the agents in all ports; therefore the agent in Churchill.

Mr. NICHOLSON: The only difference is that the Montreal Shipping Company has their business in Montreal and it would involve considerable cost for them to move as far away as Churchill; but they have been looking after Churchill, and over 10 million bushels of wheat moved out of there last year. Do you not think that this might be a factor reacting upon western Canada if we do not have as much wheat moving out of there another year? What effect would this legislation have on getting agents to go into that area?

The CHAIRMAN: Shall clause 8, as amended, carry?

Mr. DUMAS: Did not the counsel for the board say on Wednesday that the counsel or the board could be sued under the old regulations?

Mr. LANGLOIS (*Gaspé*): It was answered this afternoon and quite fully.

The CHAIRMAN: Does clause 8, as amended, carry?

Carried.

Does clause 9 carry?

9. Section 17 of the said Act is repealed and the following substituted therefor:

17. (1) The Board has a general lien in preference to all other rights, interests, claims and demands whatsoever upon all goods in its possession for the payment of any debt owing to the Board by the person in whom title to such goods is vested, whether or not the debt was incurred in respect of those goods.

(2) The Board may, as provided in section 18, seize and detain any goods in any case where, in the opinion of the Board,

(*a*) the goods are subject to the general lien referred to in subsection (1);

(*b*) any amount is due to the Board for tolls in respect of such goods and has not been paid, whether or not title to the goods is, at the time of the seizure, vested in the person by whom the tolls were incurred;

(*c*) any penalty has been incurred by reason of any violation of this Act or the by-laws by the owner of the goods, whether or not such violation occurred in respect of those goods and whether or not title thereto is, at the time of the seizure, vested in the person by whom the penalty was incurred; or

(*d*) the goods are perishable goods or goods in respect of which the amount of tolls accruing thereon is, in the opinion of the Board, likely to become greater than the amount that could be realized by the sale of such goods; and any goods so seized and detained shall, throughout the period of detention up to a maximum of thirty days, incur Board tolls in the same manner and to the same extent as if voluntarily left or stored with the Board by the owner of the goods during such period.

Mr. GREEN: Clause 9; under the present provisions the board is given a lien on all goods while such goods are in their possession. But as I read the new provisions they will now have a lien on any goods that come over their docks belonging to the same owner.

Mr. LANGLOIS (*Gaspé*): That is right.

Mr. GREEN: In other words, they are taking a general lien.

Mr. LANGLOIS (*Gaspé*): That is right.

Mr. GREEN: There may be money owing for tolls, or charges in respect to packet "a" of goods, and the board does not bother to seize them or to take any action. Then, let us say six months later or a year later packet "b" comes over the docks; it can be seized for the charges owing on packet "a". Is that correct?

Mr. LANGLOIS (*Gaspé*): That is so. That is correct. And might I add that the same thing exists in England. We are giving the board a general lien as contrasted to a particular lien on goods.

Mr. GREEN: I am not concerned about what exists in England.

Mr. LANGLOIS (*Gaspé*): It is interesting to know that they do the same thing there because they have had the experience.

Mr. GREEN: Well, conditions in England are entirely different. You are attempting by this legislation to take a general lien ahead of all other liens or charges of any kind, are you not?

Mr. LANGLOIS (*Gaspé*): That is right.

Mr. GREEN: This is an example. You come ahead of any claim for provincial tax against the goods, or any lien of any kind. You are attempting in this section to take a first priority over any goods that happen to be coming across your docks which are owned by the same owner.

Mr. LANGLOIS (*Gaspé*): That is right. The only exception is wages which are due to seamen.

Mr. GREEN: Wages due to seamen. The section comes under the provision in the Act in which you define the owner of goods as including the agent?

Mr. LANGLOIS (*Gaspé*): Well, if you refer to clause 1 you will see that the word "owner", in the case of goods, includes the agent, sender, consignee or bailee of the goods as well as the carrier of such goods.

Mr. GREEN: Do we not get into this position that under this section that you can seize goods—

Mr. LANGLOIS (*Gaspé*): Would you mind if I interrupted because I did not complete my answer. You see, if you look at the opening paragraph of subclause 1 of clause 17 you will see that it is for the payment of any debt owed to the board by the person in whom title to such goods is vested only. It is restricted to that.

Mr. GREEN: In other words this would not apply to goods brought to your docks by an agent? I want to be sure we are not getting in this position, because "owner" includes "agent", that when an agent brings in a packet of goods belonging to John Smith and the charges are not paid on those goods and when six weeks later the same agent brings in a packet of goods belonging to Tom Brown that the board can seize Tom Brown's goods under those conditions to pay the charges against John Smith's.

Mr. LANGLOIS (*Gaspé*): My answer to that, Mr. Green, is no, because the charge must have been incurred by the person in whom the title of the goods was vested.

Mr. GREEN: It is not intended to cover goods brought in by the same agent?

Mr. LANGLOIS (*Gaspé*): No. Do you mean belonging to a different owner? If you do, the answer is "no".

The CHAIRMAN: Clause 9. Carried.

Mr. GREEN: I would move that the words "in the opinion of the board" in line 22 be struck out. Those words are not included in the present Act.

Mr. LANGLOIS (*Gaspé*): Which words? I am sorry I missed them.

Mr. GREEN: Lines 22 and 23. Those words are not included in the present Act and there again you simply have to say it is their opinion that such and such a thing happened and then they can go ahead and seize without being responsible.

Mr. LANGLOIS (*Gaspé*): I see.

The CHAIRMAN: Would someone move that?

The CLERK: Mr. Green moved the amendment.

Mr. LANGLOIS (*Gaspé*): Have you got a seconder?

The CLERK: Mr. Bell seconds the motion.

The CHAIRMAN: All those in favour of Mr. Green's amendment hold up their right hands.

The CLERK: Five members in favour.

The CHAIRMAN: Contrary?

The CLERK: Thirteen members contrary.

The CHAIRMAN: The amendment is lost.

Mr. GREEN: Subclause (c) says: "Any penalty has been incurred by reason of any violation of this Act or the by-laws by the owner of the goods, whether or not such violation occurred in respect of those goods whether or not title thereto is at the time of seizure, vested in the person by whom the penalty was incurred."

Mr. LANGLOIS (*Gaspé*): I am informed this is a typographical error and after the word "whether" it should read "the person in whom the title was vested".

Mr. FINLAY: It is the same terminology.

Mr. LANGLOIS (*Gaspé*): It is the same terminology as in the opening paragraph. It should be: "A person in whom title to such goods is vested." It is a mistake—a typographical error. Would you move the amendment?

Mr. GREEN: Yes.

Mr. LANGLOIS (*Gaspé*): That in clause 9, subclause 2(c) in the fourth line, the words, "No title thereto" be substituted by the words "The person in whom title of such goods is vested."

Mr. GREEN: Is that replacing the words "By the owner" and instead of that putting "The person in whom title of such goods is vested?"

Mr. CAVERS: No, it is after "whether."

The CLERK: It is clause 9 and not clause 10.

Mr. FINLAY: The amended clause or paragraph would read: "Any penalty has been incurred by reason of any violation of this Act or the by-laws by the person in whom title to such goods is vested whether or not such violation occurred in respect of those goods and whether or not title thereto is, at the time of the seizure, vested in the person by whom the penalty was incurred." In other words, the goods may have passed to other owners.

Mr. GREEN: That meets my objection.

Mr. LANGLOIS (*Gaspé*): That meets your objection?

Mr. GREEN: Yes.

Mr. LANGLOIS (*Gaspé*): Would somebody move the change?

The CHAIRMAN: It is moved by Mr. Lafontaine and seconded by Mr. Hodgson. All those in favour?

Carried.

Clause 9, as amended? Carried.

Clause 10. Carried?

10. Section 20 of the said Act is repealed and the following substituted therefor:

"20. (1) The Board may sell at public auction or by private tender the whole *or* any part of the goods seized or detained under the provisions of section 17,

(*a*) at any time after the date of *such* seizure, in respect of goods of the kind *described* by paragraph (*d*) *of subsection* (2) of section 17; or

(*b*) at any time after the expiration of *thirty days* from the date of such seizure, in respect of any other goods; and out of the proceeds of *any* such sale *the Board may* retain *any debt, tolls, penalty or other amount referred to in section 17*, together *with all expenses incurred by the Board in connection with the seizure, detention and sale, and shall pay the surplus, if any, to the former owner of the goods.*

(2) Whether or not all or any of the rights of the Board under section 18 and under subsection (1) of this section are exercised by the Board, the Board may, in any case described in section 17, proceed against the owner of the goods in any court of competent jurisdiction for the recovery of any debt, tolls, penalty or other amount referred to in section 17 (or for the balance thereof in the event of any sale contemplated by subsection (1) of this section) and may also exercise against the owner of the goods any other right or remedy available to the Board at law."

Mr. GREEN: Here again you have the question of the former owner in line 10. It says: "Shall pay the surplus, if any, to the former owner of the goods." Now, who is going to get that?

Mr. LANGLOIS (*Gaspé*): Mr. Finlay will answer that.

Mr. FINLAY: That is the same provision as in the case of the vessels. It was simply repeated there. That is to say, the sum could be remitted to the agent for the owner, but the matter is completely unimportant from the owner's standpoint. As a matter of fact, it is merely the ordinary course. Ordinarily, in paying one's bills, you do not remit them to the person to whom you are indebted but to some agent of his and that is all this is. The board will pay the surplus if any, to the owner of the goods and the word "owner" in the earlier clause of the Act is defined as including the agent of the owner. You can remit the balance to the agent of the former owner of the goods.

The CHAIRMAN: Clause 10. Carried.

Mr. BELL: I must be rather dense here, because I do not quite understand how in clause 10, subclause 1 of the proposed amendment provides for a surplus according to the explanatory notes.

Mr. FINLAY: The provision there actually comes under the following subclause. The board shall pay or deliver the surplus, etcetera, if any, or such of the goods as remain unsold. That is the old section, and the disposal of any surplus is now covered by the proposed new section.

Mr. BELL: It still does not say in the new section what you are going to do with the surplus?

Mr. FINLAY: "And shall pay the surplus, if any, to the former owner of the goods." Those are the concluding lines.

Mr. BELL: Excuse me, I thought that was all (*b*).

The CHAIRMAN: Clause 10. Carried.

Clause 11.

11. Section 22 of the said Act is repealed and the following substituted therefor:

"22. Every person who contravenes any of the provisions of this Act or the by-laws is guilty of an offence and, except as otherwise provided in the by-laws, is liable on summary conviction to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding sixty days or to both penalty and imprisonment."

Mr. GREEN: What is the maximum penalty?

Mr. FINLAY: $500.

Mr. GREEN: Under the old Act?

Mr. FINLAY: And under this Act.

Mr. GREEN: There is no change?

Mr. FINLAY: There is no change in the maximum penalty. I should say that is the maximum pecuniary penalty. There is the penalty at the discretion of the court of 30 days imprisonment and 60 days under certain circumstances.

Mr. GREEN: We are increasing it from 30 days to 60 days?

Mr. FINLAY: No, I beg your pardon. The provision under the former Act was a fine of $500 or a maximum of 60 days imprisonment and in the by-law clause the Act went on to provide that the by-law could specify or the Governor in Council could specify that if the fine was not paid then there could be imprisonment for 30 days. To repeat, the maximum imprisonment was 60 days and the maximum fine was $500, and that has not been changed.

The CHAIRMAN: Clause 10. Carried.

Clause 11. Carried.

Clause 12. Carried.

Clause 13. Carried.

Clause 14. Carried.

Shall the title carry? Carried.

Shall the bill as amended carry.

Carried.

Shall I report the bill, as amended?

Carried.

Mr. DUMAS: Mr. Chairman, I would like to propose that we move a vote of thanks to the members of the board who have been so patient with us all this length of time.

Carried.

Mr. BELL: And Mr. Brisset too.

Mr. DUMAS: Of course.